

IN THE HIGH COURT OF BOMBAY AT GOA
MISC. CIVIL APPLICATION NO.989 OF 2018
IN
PUBLIC INTEREST LITIGATION WP NO.15 OF 2016

State of Goa

Through the Under Secretary

....

Applicant

Versus

Dr. Aquaviva Fernandes & Ors.

....

Respondents

Mr. Dattaprasad Lawande, Advocate General with Mr. Deep Shirodkar, Addl. Government Advocate for the Applicant in MCA No.989 of 2018 & for the Respondent No.1 in CP No.22 of 2018 in PILWP No.15 of 2016.

Mr. Yogesh V. Nadkarni and Ms. T. A. Gupta, Advocates for Respondent No.1 in MCA No.989 of 2018 and for the Petitioner in CP No.22 of 2018 in PILWP No.15 of 2016.

Mr. S. G. Desai, Senior Advocate with Mr. Shivan Desai, Advocate for Respondent No.7.

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

Reserved on: 28th March, 2019

Pronounced on: 10th April, 2019

ORDER (Per R. D. Dhanuka, J)

By this application, the Applicant (original Respondent No.1) in PILWP No.15 of 2016) seeks approval of the issuance of licence issued in favour of the M/s Golden Globe Hotels Private Ltd. (Respondent No.7) to this application.

2. Some of the relevant facts for the purpose of deciding this application are as under :

On 27th September, 2006, the Applicant had granted a casino licence to the M/s Hotel Leela Venture Ltd., on various terms and conditions including the condition that the said licence should operate only on the offshore vessel 'M. V. LEELA'. The casino was operating on the said vessel 'M. V. LEELA' in the river Mandovi. The said M/s Hotel Leela Venture Ltd., sold the said vessel to M/s Golden Globe Hotels Private Ltd., and sought approval of the Applicant to transfer the said offshore casino licence in favour of Respondent No.7 and to effect necessary changes in respect of the said vessel accordingly.

3. On 26th February, 2010, the Applicant issued a licence in favour of Respondent No.7 to operate games/machines table games

board only on the vessel 'M. V. Leela'. The said licence was the transferred licence which was earlier issued to M/s Hotel Leela Venture Ltd. The Respondent No.7 did not pay the annual recurring fees in the year 2010-2011 to the Applicant. The order cancelling the casino licence was subsequently withdrawn. In the meanwhile, the casino operations stopped on 4th January, 2016, 8th January, 2016 and 27th January, 2016. The Respondent No.7 made an application for renewal of licence and for permission to substitute the vessel on 4th January, 2016. On 4th April, 2016, the Respondent No.7 made a representation to bring a new vessel.

4. The Respondent No.7 filed a Writ Petition bearing No.828 of 2015 in this Court directing the Respondents therein including the Applicant herein to take a decision on the representation dated 4th April, 2016 made by the Respondent No.7. By an order dated 1st August, 2016, this Court recorded the statements made by the Respondent No.7 that the entire annual recurring fees from 2011-2016 would be paid by the Respondent No.7 and if paid, the Applicant shall favourably consider the application for renewal of casino licence. The Respondent No.7 thereafter produced the challans showing the payment of entire annual recurring fees for Rs.34,98,54,630/-, Rs.20,00,000/- and Rs.9,72,71,231/- paid by challans dated 5th October, 2016. The Respondent No.7 intimated that to start the operation of the said casino,

an MOU was signed by the Respondent No.7 with the vessel 'M.V. San Domino' in river Mandovi.

5. On 9th January, 2017, this Court disposed of the Writ Petition No.6 of 2017 recording the statement made on behalf of the Applicant that the application dated 4th July, 2016 and all connected applications filed by the Respondent No.7 would be disposed of within four weeks.

6. The Respondent No.7 thereafter filed a fresh Writ Petition bearing No.241 of 2017. By an order dated 8th March, 2017, this Court allowed the said petition in terms of the prayer clauses (a) and (b) directing the Applicant to grant the application for renewal of licence dated 4th July, 2016 filed by the Respondent No.7 and all connected applications in relation thereto forthwith. By the said order, this Court also permitted the Respondent No.7 to commence the operation of casino in the vessel procured by the Respondent No.7. The Respondent No.7 thereafter submitted all the requisite documents and also made various payments to the Applicant towards various fees and other requisite expenses. On 2nd May, 2017, the Respondent No.7 informed the Applicant that they had procured a new vessel by name 'M. V. Lucky Seven' and requested to give directions to the Captain of Ports to grant

necessary permission to enter the said vessel "M. V. Lucky Seven" in river Mandovi by allotting the old jetty place and mooring place in the said river Mandovi. The Respondent No.7 also submitted various documents as requisitioned by the Applicant.

7. The Respondent No.7 by another letter dated 28th November, 2017, informed the Applicant that the vessel 'M. V. Lucky Seven' was grounded and as per the order passed by this Court on 31st October, 2017, the Respondent No.7 has managed to take the vessel to Cochin Shipyard Ltd., for dry docking facilities. The Respondent No.7 requested the Applicant to allot a jetty to the said company for commencing operation of casino in 'M. V. San Domino' till such time the vessel 'M. V. Lucky Seven' was rendered sea worthy. On 21st April, 2017, the Applicant renewed the licence in favour of the Respondent No.7 for installation of games of electronic amusements/slot machines for a period of five years w.e.f. 22nd January, 2018 in the vessel 'M. V. San Domino' on the terms and conditions as prescribed in Notification dated 9th November, 1995 and amended from time to time in pursuance to the Government approval and order of this Court dated 8th March, 2017. It is the case of the Applicant that the Respondent No.7 has already paid the casino licence fees and all the relevant dues from 2011-2016 and accordingly, the said licence was renewed for the entire period

in pursuance of the order passed by this Court.

8. Mr. Dattaprasad Lawande, learned Advocate General invited our attention to the various annexures to the Misc. Civil Application, affidavit in reply filed by the original Petitioner in PILWP No.15 of 2016 and also invited our attention to the various paragraphs of the affidavit in rejoinder filed by the Applicant. He also invited our attention to the prayers in the PILWP No.15 of 2016 and the impugned order passed by this Court in the said PILWP on 12th July, 2017. It is submitted by the learned Advocate General that in the said order passed by this Court, this Court had noticed that the casino activities were admittedly being carried out from 1999 in the river Mandovi. This Court found at that stage that granting of an interim relief as prayed for by the original Petitioner in the facts and circumstances of that case would not be justified.

9. However, the Division Bench of this Court by way of ad-interim order directed the Applicant not to grant permissions for casino licence during the pendency of the said PILWP in the river without seeking permission of this Court. This Court also made it clear that however by an interim order no further permissions for casino licence in the river will be granted without seeking permission from this Court.

This Court granted liberty to the parties to apply. It is submitted by the learned Advocate General that by the said order, the Applicant was only restrained from issuing fresh licence for operating the casino in the river Mandovi and not from granting renewal to the existing licence issued prior to the date of said interim order.

10. It is submitted by the learned Advocate General that though the Applicant had not committed any contempt of the said interim order dated 12th July, 2017 passed by this Court, the original Petitioner filed a Contempt Petition bearing No.22 of 2018 *inter alia* praying for initiation of the proceedings for civil contempt against the Applicant and the Under Secretary (Home), Home Department, Government of Goa, Secretariat, Porvorim Goa. He invited our attention to the order dated 3rd October, 2018 passed by this Court in the said Contempt Petition No.22 of 2018 granting permission to the Applicant to file an application placing on record the material as to why a decision of grant of licence to the vessel in question for operating in river Mandovi was warranted in the facts and circumstances of the case.

11. It is submitted that the Applicant has not committed any contempt of the said order dated 12th July, 2017 passed by this Court. He submits that in any event, the Applicant has placed all the true and

correct facts on record and seeks the approval of the issuance of licence issued in favour of the Respondent No.7. He submits that the licence to operate a casino was already issued as far as back in the year 2006 in favour of M/s Hotel Leela Venture Ltd., which was transferred in favour of the Respondent No.7 in the year 2010. The Respondent No.7 though could not operate the said vessel for last several years, ultimately paid all the relevant charges for the entire period to the Applicant and complied with the other terms and conditions for renewal of licence. The Applicant has only renewed the licence on 9th March, 2017 and has not issued any fresh licence in favour of the Respondent No.7.

12. The learned Advocate General invited our attention to the prayers in the PILWP filed by the original Petitioner. He submits that the said PILWP is still pending. It is submitted that the Respondent No.7 has paid the substantial amount of renewal charges with the arrears to the Applicant and thus the Applicant have rightly renewed the said licence in favour of the Respondent No.7 in compliance with the order passed by this Court.

13. Mr. S. G. Desai, learned Senior Counsel for Respondent No.7 invited our attention to the prayers in the Writ Petition filed by his client i.e. (No.241 of 2017). He submits that prior to the date of filing

the said Writ Petition, the vessel 'M. V. San Domino' was already docked in the river Mandovi. A vessel was already operated by the 'M/s Hotel Leela Venture Ltd', prior to the said vessel and the licence was transferred to Respondent No.7 to operate the vessel in river Mandovi. It is submitted by the learned Senior Counsel that the Respondent No.7 has paid more than 20 crores to the Applicant towards the renewal and various other charges under various heads. The said renewal was granted in favour of the Respondent No.7 much prior to the date of interim order dated 12th July, 2017 passed by this Court in PILWP No.15 of 2016. He submits that the said licence is already renewed for a period of five years by the said order dated 9th March, 2017. The PILWP filed by the original Petitioner itself is filed with a malafide intention and thus the relief as prayed for by the Applicant be granted.

14. Mr. Yogesh Nadkarni, learned counsel for the original Petitioner invited our attention to the prayers in the PILWP filed by his client. It is submitted by the learned counsel that by an interim order dated 12th July, 2017, the Division Bench of this Court had directed the Applicant not to grant permission for casino licence during the pendency of the said PILWP in the river without seeking permission of this Court. It is submitted that in violation of the said order passed by the Division Bench of this Court in the said PILWP, the Applicant has

issued a licence in favour of the Respondent No.7. He also placed reliance on the order dated 3rd October, 2018, passed by the Division Bench of this Court in Contempt Petition No.22 of 2018 and would submit that this Court also has strongly observed in the said order that the Applicant ought to have applied for permission before granting any licence during the pendency of the said PILWP.

15. The learned counsel for the original Petitioner invited our attention to the subsequent correspondence exchanged between the Respondent No.7 and the Applicant, by which the Respondent No.7 sought permission for operating the casino in the vessel 'M. V. San Domino' and for allotment of jetty pending dry docking of vessel 'M. V. Lucky Seven' in terms of the licence offshore in Mandovi river and other necessary permissions. He submits that all these correspondences were exchanged for seeking specific licence for operating the casino in river Mandovi after the interim order dated 12th July, 2017 came to be passed by the Division Bench of this Court in PILWP.

16. Learned Counsel invited our attention to the communication dated 22nd January, 2018, from Under Secretary (Home) in Form B granting specific licence for installation of games of electronic amusements/slot machines in favour of Respondent No.7 for a

period of five years w.e.f. 22nd January, 2018 in the vessel 'M. V. San Domino' for operation in the river Mandovi or till the alternate feasible site would be finalized by the Government whichever is earlier and thereafter within the territorial sea waters of Goa outside the river Mandovi. He submits that it is thus clear that the specific licence for operation of casino in river Mandovi was granted on 22nd January, 2018, which was much after the interim order dated 12th July, 2017 passed by a Division Bench of this Court. The Applicant has thus committed a gross violation of the interim order dated 12th July, 2017 passed by this Court. The Applicant cannot be granted any approval to the grant of the said licence in favour of the Respondent No.7 to operate the casino in the said vessel 'M. V. San Domino' in the river Mandovi.

17. Mr. Nadkarni, learned counsel for the original Petitioner submits that when the interim order was passed by this Court on 12th July, 2017, only five vessels were running the casino in the river Mandovi. The vessel of Respondent No.7 in respect of which the permission was granted by the Applicant was not even in operation on the date of the said interim order passed by this Court.

18. Mr. Lawande, learned Advocate General in rejoinder submits that the licence dated 26th February, 2010 clearly specified that

the licence had to operate the casino only on the vessel 'M. V. Leela' and that the licence was valid only within the territorial waters of Goa. He submits that the casino of the Respondent No.7 was not a land based casino but was an offshore casino permitted to be operated on a vessel within the territorial waters of Goa. The said vessel operated in the river Mandovi. He submits that the Applicant has only renewed the casino licence in favour of Respondent No.7 by order dated 9th March, 2017 and not granted any new licence as sought to be canvassed by the Petitioner.

19. In so far as the correspondence post the date of interim order dated 12th July, 2017 between the Respondent No.7 and the Applicant are concerned, it is submitted that the Respondent No.7 had brought to the notice of the Applicant that the vessel 'M. V. Lucky Seven' which was sought to be brought as a new vessel was grounded later on and had to be replaced again with the vessel 'M. V. San Domino'. He submits that the Respondent No.7 had made a specific request for renewing a licence for a further period of five years and for substitution of the earlier vessel with 'M. V. San Domino'. This Court had recorded the statement made by the Respondent No.7 in the Writ Petition No.828 of 2015 that the annual recurring fees would be paid within four weeks to enable the Applicant to take a decision to renew the

licence. This Court also recorded the statement made by the Applicant that upon deposit of such amount, the Applicant shall favourably consider the application for further renewal of the casino licence.

20. It is submitted that the Respondent No.7 thereafter paid the substantial amount to the Applicant and complied with all the terms and conditions for the renewal of a licence. The learned Advocate General invited our attention to the averments made in the paragraphs 47 and 48 of the Writ Petition No.241 of 2017 filed by the Respondent No.7 and would submit that it was a specific averment made by the Respondent No.7 that it had made necessary arrangement for procuring other vessel 'M. V. San Domino' which had capacity of more than 200 passengers and the said vessel was already docked in the river Mandovi and had all the necessary documents and registration. He submits that with such averments in the said petition, the Respondent No.7 had applied for a writ of mandamus against the Applicant to grant the application for renewal of licence dated 4th July, 2016 filed by it and all connected applications in relation thereto forthwith and to grant permission to commence the operation of casino in the vessel procured by the Respondent No.7. He submits that the Applicant had complied with the mandatory order passed by this Court in the said Writ Petition filed by the Respondent No.7 which order as well as the order passed by the

Applicant was prior to the date of interim order dated 12th July, 2017.

21. In so far as the reliance placed by the learned counsel for the original Petitioner on licence dated 22nd January, 2018 is concerned, it is submitted by the learned Advocate General that the said communication dated 22nd January, 2018, was issued only for operation of electronic amusement/slot machines/table games in furtherance of renewal of casino licence which was granted on 9th March, 2017 and was not a new licence.

22. It is submitted that though no permission was required to be obtained by the Applicant before granting any renewal of licence in favour of Respondent No.7 since the said renewal licence was issued by the Applicant much prior to the date of interim order dated 12th July, 2017, the Applicant has preferred this application *inter alia* praying for approval of the said licence, which relief be granted by this Court.

23. A perusal of the PILWP filed by the original Petitioner indicates that the Petitioner had prayed for a writ of mandamus to quash and set aside the licence dated 13th June, 2016 permitting the operation of electronic amusement/slot machine/table games in the vessel 'M. V. Royale Flotel' in river Mandovi and/or in any inland waters of the State

of Goa and few other vessels i.e. Deltin Jack and Deltin Royale owned/operated by Respondent Nos.4 and 5 and in the vessels Casino Pride – 1 and Casino Pride – 2 owned/operated by Respondent No.6 in river Mandovi or in any inland waters of the State of Goa. The Respondent No.7 was not a party to the said PILWP and has not been impleaded as party even till date.

24. On 12th July, 2017, the Division Bench of this Court had taken a *prima facie* view that the offshore activities permitted are essentially towards the sea. This Court observed that there are arguable issues raised in the petition. This Court accordingly admitted the said PILWP. In so far as the interim relief prayed for by the original Petitioner is concerned, this Court observed that since such activities have been admittedly carried out from 1999 and in the facts and circumstances of this case, it would not be justified to grant any interim relief as prayed for by the Petitioner. This Court however further observed that by an ad-interim order, the Respondent shall not grant permission for casino licence during the pendency of the said PILWP in the river without seeking permission of this Court. It was further directed by an interim order that no further permissions for casino licence in the river be granted without seeking permission of this Court.

25. In so far as the licence in favour of the Respondent No.7 is concerned, a perusal of the record indicates that the said licence was initially granted in favour of M/s Hotel Leela Venture Ltd., in respect of the vessel 'M. V. LEELA' on 27th September, 2006. On 26th February, 2010, the Applicant transferred the said licence in favour of the Respondent No.7. It is not in dispute that the said M/s Hotel Leela Venture Ltd., was operating the said vessel in the river Mandovi and the said vessel was operating a casino in the river Mandovi. The Respondent No.7 however could not operate the said vessel for quite some time for various reasons. The Respondent No.7 thereafter agreed to pay the entire renewal charges and to comply with various conditions for grant of renewal licence to the Applicant and applied for renewal of the said licence.

26. A perusal of the record indicates that the Respondent No.7 paid the renewal charges for the entire period though the Respondent No.7 could not operate the casino in the said vessel 'M. V. Leela' and thereafter in the other vessel also. The Respondent No.7 had filed a Writ Petition bearing No.241 of 2017 in this Court. By an order dated 8th March, 2017, this Court directed the Applicant to grant the application for renewal of licence dated 4th July, 2016 filed by the Respondent No.7 and all connected applications in relation thereto forthwith. This Court

also directed the Applicant to permit the Respondent No.7 to commence the operation of casino in the vessel procured by the Respondent No.7.

27. In the said Writ Petition No.241 of 2017, the Respondent No.7 had averred that the said vessel 'M. V. Leela' which was to be replaced by 'M. V. San Domino' was already in the Mandovi river for long period. In paragraph 47 of the said Writ Petition, it was averred that the said vessel 'M. V. San Domino' was already docked in the river Mandovi and had all the necessary registration/permissions including NOC from the Captain of Ports and Certificate of Registration under the Inland Vessels Act. Pursuant to the order passed by the Division Bench of this Court in the said Writ Petition No.241 of 2017, the Applicant issued a renewal licence in favour of the Respondent No.7 on 9th March, 2017 which was much prior to the date of the interim order passed by this Court.

28. A perusal of the said order dated 12th July, 2017, indicates that the said order did not prohibit the Applicant from renewing the existing licence for operating the casino in the river Mandovi directed to be issued by any earlier orders of this Court. A perusal of record clearly indicates that the Applicant has not issued any fresh licence in favour of the Respondent No.7 after passing of the said interim order dated 12th

July, 2017 by this Court in the said PILWP. In our *prima facie* view the Applicant has not committed any contempt of the said order dated 12th July, 2017 by renewing the licence pursuant to an earlier mandatory order passed by this Court. The Respondent No.7 has paid the renewal charges for the entire period to the Applicant. A perusal of the record further indicates that the casino was already operated in the said vessel 'M. V. Leela' from 2006-2010 when the said licence was issued in favour of M/s Hotel Leela Venture Ltd., was transferred in favour of the Respondent No.7.

29. We are not inclined to accept the submission of the learned counsel for the Petitioner that on 22nd January, 2018, the Applicant has issued any fresh licence in favour of the Respondent No.7 to operate the casino activities for the first time in the vessel 'M. V. San Domino' in the river Mandovi. We are inclined to accept the submission of the learned Advocate General that the said writing is issued only for operation of electronic amusement/slot machines/table games in furtherance of the decision to renew the casino licence already issued on 9th March, 2017.

30. Be that as it may, in our view to be on the safer side, the Applicant ought to have applied for permission from this Court by making an application for granting renewal of the existing licence or

ought to have applied for clarification of the said order before renewing the said licence. This Court in the order dated 3rd October, 2018 passed in the Contempt Petition has observed that whatever may be the cause for passing the order, propriety required that an application should have been made to this Court in the pending petition. In view of this observation made by the Division Bench of this Court in the said Contempt Petition, the Applicant has made this application *inter alia* praying for approval to the issuance of licence already issued in favour of the Respondent No.7. In these circumstances, we are inclined to grant such approval to the Applicant as prayed for. A perusal of the communication dated 22nd January, 2018, indicates that in the said licence it has been made clear that the same was valid for operation in the river Mandovi or till alternate feasible site was finalized by the Applicant whichever is earlier and thereafter within the territorial sea waters of Goa outside the river Mandovi.

31. We therefore pass the following order :

(a) The Misc. Civil Application No.989 of 2018 is allowed in terms of prayer clause (A).

(b) It is made clear that the renewal of licence granted in favour of the Respondent No.7 by the Applicant would be subject to the

outcome of the PILWP No.15 of 2016.

(c) It is made clear that this application is allowed by this Court considering the fact that this Court had directed the Applicant to renew the licence in favour of the Respondent No.7 prior to the interim order dated 12th July, 2017. This order shall not be used as a precedent.

(d) The Respondent No.7 would be at liberty to apply for its impleadment in the said PILWP No.15 of 2016.

(e) There shall be no order as to costs.

Prithviraj K. Chavan, J.

R. D. Dhanuka, J.

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