

IN THE HIGH COURT OF BOMBAY AT GOA***WRIT PETITION NO. 1125 OF 2018***

Mrs. Dominica Rodrigues
w/o Mr. Santan Rodrigues
Age 38 years, Married, Indian National
Business
R/o.House No.55, Tiracol
Pernem-Goa.

... Petitioner

Versus

1. The State of Goa,
Through Chief Secretary,
Secretariate, Porvorim-Goa.

2. Director
Directorate of Health Service,
Campal, Panaji Goa.

3. The Health Officer
Community Health Centre
Pernem Goa.

.... Respondents

Mr. Ganesh R.Naik, Advocate for the Petitioner.

Mr. Dattaprasad Lawande, Advocate General with Mr. P. Dangui,
Government Advocate for Respondents.

***Coram : M.S. Sonak &
Prithviraj K. Chavan, JJ.***

Date : 10 January 2019.

Oral Judgment (Per M.S.Sonak, J)

1. Heard. Rule. Rule returnable forthwith. Heard finally with the consent of the learned counsel for the parties. Mr. Dangui, learned Government Advocate waives notice on behalf of the respondents.

2. The petitioner is basically aggrieved by the order dated 9.11.2018 made by respondent no.3 suspending the N.O.C. for operation of bar and restaurant. There is no dispute that respondent no.3 has made the order dated 9.11.2018 in exercise of powers vested in him under Section 94A of the Goa, Daman and Diu Public Health Act, 1985 and Rules, 1987 (for short "Act) made therein.

3. The petitioner has pointed out that Section 103 of the said Act provides an appeal against the decision of respondent no.3- Health Officer. However, it is submitted that till date, no appellate authority has been constituted and, therefore, the petitioner is deprived of the right to appeal against the order dated 9.11.2018 made by respondent no.3. In the aforesaid fact situation, the petitioner, prays for the following reliefs in the present petition:-

“(i) Grant a Writ of Mandamus or a Writ in the nature of Mandamus or any other Writ, Order or Direction thereby directing Respondent No.1 and 2 to appoint the Appellant Authority or Authority or Officer to hear appeals under or arising under Goa, Daman and Diu Public Health Act, 1985 and Rules 1987.

(ii) Stay the impugned order till the final disposal of this Petition.

(iii) Ex-party interim relief in terms of prayer (ii) above.

(iv) For the cost of the present petition.”

4. Section 103 of the said Act, reads thus:-

“103. Appeal against decision of Health Officer :- Any decision of the Health Officer against which an appeal is not otherwise provided for in this Act shall be subject to such appeal as may be prescribed.”

5. Section 2 (28) of the said Act defines expression “Prescribed” to mean prescribed by the Government by rules made under this Act. Presently, there are no Rules framed with regard to the constitution of appellate authority and, therefore, Section 103 of the said Act, though on the Statute Book, is virtually inoperational.

6. Mr. Ganesh Naik, learned counsel for the petitioner points out that under Section 110-A of the said Act, there is a bar of suits and prosecutions. This section provides that, no court shall entertain any suit, application, prosecution or other proceedings in

respect of any order, decision, direction or notice issued by any authority under this Act and no such order, decision, direction or notice issued shall be called in question otherwise than by preferring an appeal as provided under this Act. If this is the position, then the State will have to take emergent steps to constitute an appellate authority, so that, parties who are aggrieved can resort to the remedy of appeal under the said Act. It is needless to emphasise that the right of appeal is a very valuable right and such right cannot be denied on account of failure to constitute appellate authority under Section 103 of said Act.

7. The parties, who are affected by the orders made by the Health Officer, must have right to question them, no doubt in accordance with law. On one hand in Section 110-A of the said Act imparts statutory finality to such orders, in the sense, there is bar of suits and prosecutions. On the other hand the State has failed to constitute the appellate authority under Section 103 of said Act. Section 110-A of the said Act itself provides that such orders made by the Authorities under said Act shall not be called in question otherwise than, by preferring an appeal as provided under the said Act. In such circumstances, it is incumbent upon the State to ensure that the remedy of an appeal is not only available *de jure* but also *de*

facto.

8. Mr. Lawande, learned Advocate General for State of Goa graciously makes a statement that the steps will be taken expeditiously to constitute the Appellate Authority for hearing appeals under Section 103 of the said Act. He states that necessary Rules will be framed in that regard, as expeditiously as possible. He assures this Court that the process in all probabilities will be complete within a period of six weeks but, requests that an outer time limit of eight weeks be granted for completion of this exercise. The statements in this regard are accepted and the respondents are directed to take all steps to constitute and make operational the Appellate Authority under the provisions of the said Act latest within two months from today.

9. By our order dated 4th December 2018, taking into consideration the extraordinary situation which has arisen, we had granted the petitioner liberty to seek review of the order dated 9.11.2018 before the Health Officer. The learned counsel for the petitioner points out that such application seeking review has already been filed on 18.12.2018. Mr. Lawande, learned Advocate General states that Health Officer will examine and decide this application, in

accordance with law and communicate the decision thereon to the petitioner latest within a one month from today. This statement is also accepted and respondent no.3 is directed to act accordingly.

10. We make it clear that we had no occasion to go into the issue as to whether the Health Officer has any powers of review. The aforesaid direction was made in the peculiar facts and circumstances of the present case and, therefore, the same, need not be treated as precedent.

11. Rule is made absolute in the aforesaid terms. There shall be no order to costs.

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

Prithviraj K. Chavan, J.

M.S.Sonak, J.