

**IN THE HIGH COURT OF BOMBAY AT GOA****WRIT PETITION NO.1126 OF 2017**

1. Advani Hotels & Resorts  
India Ltd. A company registered  
under the Companies Act, 1956,  
with registered office at 18A,  
18B, Jolly Maker Chambers II,  
Nariman Point, Mumbai – 400 021,  
represented herein by its duly  
authorised Vice President (Finance)  
Shri Shankar G. Kulkarni,  
Major of age, having his office at  
Caravela Bech Resort Goa,  
Varca Beach, Salcete, Goa-403 721.
2. Mr. Sunder Gurdas Advani,  
major of age, Chairman and  
Managing Director and Share  
Holder of Petitioner No.1,  
resident of 22B, Woodland  
Apartments, Pedder Road, Mumbai,  
Maharashtra – 400026. ....Petitioners

V/s.

1. The State of Goa,  
through its Chief Secretary,  
Secretariat, Porvorim, Goa.
2. The Under Secretary (Home),  
Department of Home,  
Secretariat, Porvorim, Goa. .... Respondents

Mr. Nitin Sardessai, Senior Advocate with Mr. Kaif Noorani,  
Advocate for the Petitioners.  
Mr. D. Pangam, Advocate General with Mr. Pravin Faldessai,  
Additional Government Advocate for the Respondents.

**Coram :- S. C. GUPTE &  
NUTAN D. SARDESSAI, JJ.**

**Date:- 24<sup>th</sup> June, 2019**

**ORAL JUDGMENT : (Per S.C. Gupte, J.)**

This writ petition is filed by the petitioners who run an onshore casino. The petition challenges an order passed by the Under Secretary (Home) of the Government of Goa in pursuance of a show cause notice issued to the petitioners for recovery of fees for running of the casino and a demand notice issued to the petitioners in pursuance of such order.

2. The bare facts of the petitioners' case, necessary for the purposes of determining the controversy in the petition, may be noted as follows:

2.1 Petitioner no.1 is the owner of a five star hotel run under the name and style of 'Caravela Beach Resort' situated at Varca Goa. Petitioner no.1 was operating a casino in this hotel by the name of 'Goa Nugget' under a licence initially issued on 12/02/1993 and valid for a period of 5 years and thereafter renewed from time to time up to 12/10/2014. The last renewal of the licence was granted to the petitioners for the period from 25/04/2008 to 24/04/2013. The licence and its renewal were under Section 13A of the Goa, Daman & Diu Public Gambling Act, 1976 ('the Act' for short hereinafter), under which the Government had issued a notification fixing

conditions including payment of fees for the licence.

2.2 On 25/05/2012, the Government of Goa issued a notification under Section 13A of the Act, read with Section 21 of the General Clauses Act, amending the original notification and re-fixing recurring licence fees for authorised game of electronic amusement/slot machines in five star hotels. The notification, inter alia, required a licensee of a land based casino in a five star hotel to pay an annual recurring fee of ₹2,50,00,000/- (Rupees two crores fifty lakhs only) irrespective of the number of machines installed on the licenced premises. (In addition to the annual recurring fees, under the notification then operating, the licensees were required to pay a fixed licence fee.) The notification was said to come into force with immediate effect.

2.3 After the notification was published, the petitioners, vide their letter dated 01/06/2012, addressed to respondent no.2, surrendered their licence with immediate effect. The petitioners protested that the increase in the then prevailing recurring annual fee (from ₹7,60,000.00 to ₹2,50,00,000.00) was grossly disproportionate and excessive. The petitioners called such surrender to be under duress and under protest, reserving their right of reinstatement upon a reasonable

recurring fee being fixed for the operation of the licence. Respondent no.2 accepted the surrender of the licence.

2.4 Subsequently, by clarification/guidelines issued vide order dated 21/08/2012, published in the Official Gazette on 30/08/2012, the respondent State purported to remove doubts in the matter of revision of payment of casino fees made by its notification of 25/05/2012.

2.5 It is the case of the petitioners that this clarification made the increase in annual recurring fees (made by the notification of 25/05/2012) effective only from the date on which it was due, to be collected/paid. They submit that in their case, the fees were due around the beginning of the annual licensing period, that is to say, with effect from 25/04/2012 and that the fees so due were already collected/paid and as a result, for the same period they were not liable to pay the revised annual recurring fees. On that basis, after the clarificatory order was published by the Government, the petitioners, vide their letter dated 30/10/2012, addressed to respondent no.2, requested the latter to return back the original licence, which was surrendered under protest on 01/06/2012 though the same was valid upto 24/04/2013.

2.6 The petitioners' request took some time to process on the part of the Government. Finally, vide their letter dated 22/01/2013, the respondent approved the petitioners' request for reinstatement of the Casino licence. Vide their letter dated 07/02/2014, the respondents acceded to the petitioners' request and extended the validity of the licence for the period of 238 days with effect from 17/02/2014 to 12/10/2014, purportedly on the basis that this time was lost unto the petitioners without any fault of theirs. (That was the time taken by the State Government to process the petitioners' application for reinstatement of the licence and allowing the petitioners to operate the casino.)

2.7 In the interregnum, this Court vide its order dated 03/02/2014, construed the original notification of 25/05/2012 in a Writ Petition filed by Hotel Leela Ventures Ltd. (Writ Petition No.782/2012). The Division Bench of this Court hearing that petition held that the notification would take effect from the date of the notification and not from any subsequent date. Hotel Leela Ventures had made payment before the commencement of the annual licensing period, i.e. prior to the issue of the notification. (Payment was made by Hotel Leela Ventures Ltd. in February, 2012, whereas the

notification was issued in May 2012.) Hotel Leela Ventures were claiming that the revised rate was not applicable to them for the whole annual period for which they had already made payment under the old rate. This contention was held to be erroneous by the Division Bench. The Court held that such an interpretation would mean or imply that the notification would come into effect from a date subsequent to the notification, that is to say, when the year for which the payment was made expired. The Court held that prospectivity of the notification would imply the payment to be made from the date of the notification and not before. The Court clarified that in case the licensee had made payment for the year 2012-13 prior to 25/05/2012, the licensee's payment would be accepted at the old rate for the period upto 25/05/2012; he would, however, have to make payment of licence fee at the new rate for the period after the issuance of the notification. That is how the prospective effect of the notification was interpreted by the Division Bench.

2.8 After this Court clarified the matter thus, by their demand notice dated 10/07/2014, the respondents called upon the petitioners to pay annual recurring fees at the new rate with effect from 25/05/2012 and pay the difference in

annual recurring fees accordingly. The respondents thereafter issued another demand notice requiring payment of annual recurring fees for the period of 238 days with effect from 17/02/2014 to 12/10/2014 for which period the validity of the licence was extended by the respondents. Being aggrieved, the petitioners carried the matter in appeal before the Hon'ble Chief Minister.

2.9           Around that time, the petitioners received a show cause notice dated 19/11/2015, calling upon them to show cause why the amount towards the difference in annual recurring fees demanded for the period from 25/05/2012 should not be recovered from them. The petitioners challenged the show cause notice by filing a Writ Petition (Writ Petition No.219/2016). The petition was disposed of by this Court by granting liberty to the petitioners to file a reply to the show cause notice and stayed any order that may be adverse to the petitioners for a period of five weeks.

2.10           The petitioners, thereafter, filed a reply and were granted a hearing before respondent no.2. Respondent no.2, by the impugned order dated 22/11/2017, directed the petitioners to pay the difference in licence fees in the sum of ₹60,78,877/- and ₹1,63,01,369/-, respectively, for the period

between 17/02/2014 and 12/10/2014. This order is the subject matter of challenge in the present petition.

3. Mr. Sardessai, learned Senior Counsel appearing for the petitioner, submits that the clarification issued by the State Government on 21/08/2012 (published in the Government Gazette of 30/08/2012) was by an order and in the name of the Governor of Goa; it made it abundantly clear that annual recurring fees notified vide notification of 25/05/2012 were effective only from the date on which such fees would fall due to be collected/paid. Learned Senior Counsel submits that in the petitioners' case the fees for the year 2012-13 were already due and collected/paid much prior to the notification of 25/05/2012. The next annual recurring fees would fall due and to be collected/paid under the notification of 25/05/2012 as of 25/04/2013, i.e. at the beginning of the new annual licensing period. Learned Senior Counsel submits that fees at the revised rates could only be recovered for that period and onwards, and not for the period for which the annual fees which had already fallen due and collected/paid prior to the notification of 25/05/2012. Learned Senior Counsel relies on a judgment of our Court in

the case of **Kolhapur Engineering Association & Ors. V/s. The State of Maharashtra through the Department of Energy and Labour & Ors.**<sup>1</sup> in support of his submission that any stipulation of licence fee (already due and paid) cannot be amended with retrospective effect. Learned Senior Counsel submits that in keeping with this law, the State had issued suitable clarifications on 30/08/2012 and the State, accordingly, could not be permitted to recover revised fee from the petitioner for the same licensing period.

4. Learned Advocate General supports the impugned order and demand notice, submitting mainly that the original notification of 25/05/2012 was under Section 13A of the Act and had a statutory force. He submits that the clarification of 30/08/2012 was in the nature of departmental instructions or clarification; it could not run counter to such statutory provision. He submits that on the interpretation proposed by the petitioners, the circular of 30/08/2012 would be contrary to a statutory provision of law and cannot be enforced. He relies on the judgment of the Supreme Court in the case of **Rajasthan State Industrial Development and Investment Corporation V/s. Subhash Sindhi**

---

<sup>1</sup> 2004 Vol.106(3) Bom.L.R. 722

**Cooperative Housing Society, Jaipur & Ors.**<sup>2</sup> in support of his submission. Learned Advocate General submits that even if the respondents had accepted the petitioners' request for return of licence on the basis of payment of old annual recurring fees, such action is not binding on the State; there can be no estoppel against the law or public policy. He submits that the impugned order and the demand notice based thereon are expressly on the footing that departmental instructions/guidelines could not override a provision having statutory force.

5. In rejoinder, it is submitted by Mr. Sardesai that the notification of 25/05/2012 and the clarification of 30/08/2012 were both by way of an executive fiat; both were published in the Official Gazette; and both have the same force of law as executive instructions issued under Article 166 of the Constitution of India. Learned Senior Counsel submits that it cannot possibly be urged that the notification of 25/05/2012 overrides or has an effect despite the clarificatory notification of 30/08/2012.

6. At the outset, it must be noted that the Act

---

<sup>2</sup> (2013) 5 SCC 427

prohibits gaming or running of a gaming house and makes the same an offence. Section 13A provides for an exception to this prohibition. Sub-section (1) of Section 13A, which is a non-obstante clause, provides inter alia for the Government's authority to permit any game of electronic amusement/slot machines in a five star hotel subject to such conditions, including payment of such recurring and non-recurring fees, as may be prescribed. Sub-section (2) provides that the provisions of the Act shall not apply to any game authorised under Sub-section (1). Conditions including payment of recurring and non-recurring fees have thus to be prescribed under Section 13A. In other words, the Government is empowered to frame rules by way of delegated legislation providing for conditions including payment of fixed and recurring fees for permitting games of amusement/slot machines in five star hotels. The notification issued by the Government of Goa on 25/05/2012 is, thus, a piece of delegated legislation. It is expressly issued under the powers reserved unto the Government under Section 13A. That it is published by an order and in the name of the Governor of Goa does not make it a mere executive instruction under Article 166 of the Constitution of India. It is one thing to say that all

executive instructions issued by the Government under Article 166 are by an order and in the name of the Governor and quite another to say that every order issued by an order and in the name of the Governor is nothing but an executive instruction under Article 166 and not a piece of delegated legislation.

7. Let us now test the status of the clarification issued by the Government on 30/08/2012. At the very outset, the clarification is issued purportedly to remove doubts in the matter. Secondly, the order itself is clearly stated to be in the nature of clarification/guidelines. It is quite clear from these recitations and the overall tenor of the order that it is nothing but a notice or circular or guideline. As a notice, circular or guideline, the order published on 30/08/2012 cannot be interpreted so as to run counter to the statutory rule to be found in the notification of 25/05/2012, for if it so runs counter, on the particular interpretation proposed by the petitioners, it cannot be enforced. The Supreme Court in **Rajasthan State Industrial Development and Investment Corporation** (supra), has, after referring to various earlier judgments on the point, laid down a clear

proposition of law that executive instructions, which have no statutory force, cannot override the law and no notice, circular or guideline, etc. which is contrary to statutory rules can be enforced.

8. What is more is that the notification of 25/05/2012 has already been interpreted by a Division Bench of our Court in the case of **Hotel Leela Ventures Ltd.** (supra). The Court has explained the prospectivity to be attributed to the notification of 25/05/2012. The Court has clarified that if the licensee has already paid annual recurring fees prior to the date of the notification or for a period prior to the notification, the applicable fees would be under the old notification only upto the date of the new notification; prospectively, i.e. from the date of the new notification, that is to say, with effect from 22/05/2012, for the balance licensing period the licensee would have to pay at the revised rate.

9. Respondent no.2, in his impugned order, thus, appears to have applied the law consistently with the law laid down by the Supreme Court on executive instructions and in keeping with the interpretation of the particular notification by

this Court in Hotel Leela Ventures Ltd.

10. Mr. Sardesai would, however, submit that the clarification issued on 30/08/2012 was not brought to the notice of the Court, when the Court decided the case of Hotel Leela Ventures Ltd. It is possible to say this, though, it must be emphasized that the case of Hotel Leela Ventures Ltd. was decided much after the clarification was issued. Learned Counsel is also right that the clarification of 30/08/2012 does lend itself to the interpretation suggested by him, but it is by no means the only interpretation which the clarification of 30/08/2012 is capable of. The clarification also lends itself, read as a whole and in the light of the other clauses in it, to imply that the prospectivity of the original notification of 25/05/2012 is to be reckoned with reference to the licensing period for which the fees may be payable; the revision of fees provided in it shall apply only for the licensing period after the date of the notification, including the balance licensing period for the year in which the notification was issued. That would be consistent with the view expressed by our Court in the case of Hotel Leela Ventures Ltd.

11. Whatever may be the correct interpretation of the clarification published on 30/08/2012, we are concerned here with the view of it taken by a statutory authority. In an application of a writ of certiorari, we are not going to examine if the other view proposed by the petitioners is a plausible view or even a more plausible view than what is expressed by the authority. The mandate of this Court, whilst undertaking judicial scrutiny of any impugned order, is to see if the order itself presents a possible view. We have to see whether all relevant and germane materials have been duly considered by the statutory authority and whether any irrelevant or non-germane material or circumstance is taken into account. As we have noted above, the view expressed by the authority in its impugned order is not just a possible view, but a pre-eminently possible view in the light of the law laid down by the Supreme Court in the case of **Rajasthan State Industrial Development and Investment Corporation** (supra) and by our Court in the case of **Hotel Leela Ventures Ltd.** (supra).

12. The judgment of **Kolhapur Engineering Association** (supra) cited by Mr. Sardesai, is distinguishable.

That was a case where the rule framed under the Factories Act, before its amendment, provided for application for registration and grant of licence under that Act. The Licensee before the Court had already obtained a licence before the rule was amended by revising the licence fees. The revised fees were sought to be made applicable for the anterior period. Our Court held that the amended rule could not be applied to licences already issued. In our case, the fees are not fixed licence fees, but annual recurring fees and the revision is being applied only prospectively, i.e. for the balance annual licensing period post the revision notification. In our case, the Division Bench has already construed the prospectivity of the revision in that light.

13. In the premises, there is no merit in the petition. The petition is dismissed.

14. At the request of learned Senior Counsel for the petitioners, the State is, however, directed not to enforce its order and demand notice for a period of six weeks from today.

**NUTAN D. SARDESSAI, J.**

**S. C. GUPTE, J.**

NH