

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 64 OF 2019.

Gregory Daniel B. Shah
Aged 52 years, Overseas
Citizen of India, Resident
of V E5, Riviera Palm S1,
Arpora, Bardez-Goa.
Through his Power of Attorney,
Keshawanand Devidas Morajkar,
Son of Devidas Morajkar,
48 years old, married,
Indian National and resident of
House No.555, Mauswaddo
Pernem, Goa.

... Petitioner.

Versus

1. State of Goa,
Through the Chief Secretary,
Having office at Secretariat,
Porvorim, Goa.
2. Secretary of Finance (R&C)
Appellate Authority, Government
of Goa, Having Office at
Secretariat Porvorim-Goa.
3. Additional Secretary (Finance)
Having Office at Department
of Finance (R&C), Secretariat,
Porvorim-Goa.
4. Commissioner of Excise
Government of Goa,
Department of Excise,
Panaji-Goa.

... Respondents.

Mr. S. Desai and Ms. K. Pednekar, Advocates for the petitioner.

Mr. P. Faldessai, Addl. Govt. Advocate for respondent nos.1 to 4.

**Coram:- R. D. DHANUKA &
PRITHVIRAJ K. CHAVAN, JJ.
Date:- 8th April, 2019.**

ORAL JUDGMENT (Per R. D. Dhanuka, J.)

Rule.

2. Mr. Phaldessai, learned Additional Government Advocate waives notice on behalf of respondent nos.1 to 4.

3. By consent of the parties, petition is heard finally.

4. This petition is filed under Article 226 of the Constitution of India. The petitioner has impugned three orders passed by the Authorities which have effect of cancelling the licences Nos. FCL/2171 and FL/483 issued to the Petitioner and for other reliefs.

5. In so far as order dated 16.8.2018 annexed at A-3 to the petition passed by the learned Additional Secretary,(Finance) is concerned, a perusal of the said order indicates that said order has been passed without issuing any show cause notice or without rendering any opportunity to the petitioner of being heard. By the said order the learned Additional Secretary,(Finance) informed the petitioner that the State Government has decided to rescind the approval granted for liquor licensees for retail of sale of IMFL, CL & FL for consumption in

the restaurant premises as conveyed vide this Department's letter of even number dated 7.5.2015.

6. The Commissioner of Excise passed an order on 22.3.2018 thereby cancelling the licences issued to the petitioner with immediate effect and disposed of the show cause notice dated 15.1.2018. The Appellate Authority i.e Additional Secretary,(Finance)(R&C) dispose of the appeal filed by the petitioner by order dated 31.10.2018 on the ground that the Government had already rescinded the approval granted to the petitioner for liquor licence for retail sale of IMFC, CL & FL for consumption in the restaurant premises prescribed in the said order. It is held that once the Government has decided the matter, the said Authority could not have exercised the jurisdiction and pass any order and accordingly disposed of the appeal preferred by the appellant.

7. Since the order dated 16.8.2018 passed by the Additional Secretary,(Finance) was passed without issuing any show cause notice and without hearing the petitioner, the said order deserves to be set aside.

8. The impugned order dated 16.8.2018 is accordingly quashed and set aside.

9. Petitioner would be at liberty to file a detail reply in the nature of the representation before the Additional Secretary,(Finance) on or before 25.4.2019. The learned Additional Secretary,(Finance) shall pass a fresh order after hearing the petitioner and after complying with the principles of natural justice and in accordance with law within four weeks from the date of the petitioner filing reply/representation and shall communicate the order within one week to the petitioner from the date of passing of such order without fail. Order dated 31.10.2018 passed by the Appellate Authority i.e. Secretary Finance(R&C) stands set aside. Appeal no.1/2018 filed by the petitioner before the Chief Secretary who is Appellate Authority Under Goa Excise Duty Act & Rules stands restored.

10. It is made clear that Chief Secretary shall decide the matter afresh without being influenced by the order passed by the Commissioner of Excise dated 22.3.2018 and also order dated 31.10.2018 passed by the learned Secretary Finance (RNC) and on its own merits.

11. It is made clear that the Appellate Authority i.e. Chief Secretary shall hear the appeal no.1/2018 preferred by the petitioner depending upon the out come of the order that would be passed by the

Additional Secretary,(Finance) expeditiously and not later than four weeks from the date of Communication of the order passed by Additional Secretary (Finance) after hearing the petitioner.

12. Rule is made absolute on the aforesaid terms. There shall be no order as to costs. Parties to act on the authenticated copy of this order.

PRITHVIRAJ K. CHAVAN, J.

R. D. DHANUKA, J.

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