

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.28 OF 2021

ROSHNI DE SILVA AND 11 ORS ... Petitioners
 VS

STATE OF GOA,
 THR. ITS CHIEF SECRETARY
 AND 14 ORS ... Respondents

Mr. Y. V. Nadkarni and Ms. Renika De Souza, Advocates for the
 Petitioners.

Mr. Manish Salkar, Government Advocate for Respondent Nos.1, 4, 5,
 6, 7, 8, 9, 10, 12 and 15.

Mr. Pavithran A. V., Advocate for Respondent No.2.

Mr. Siddharth Malik holding for Mr. V. Rodrigues, Advocate for
 Respondent No.13.

Mr. Vibhav Amonkar, Advocate for Respondent No.14.

Coram:- M. S. SONAK &
SMT. M. S. JAWALKAR, JJ.
Date:- 16th March 2021

P.C.

Heard Mr. Y. V. Nadkarni, learned counsel for the
 Petitioners, Mr. Manish Salkar, learned Government Advocate for
 Respondent Nos.1, 4, 5, 6, 7, 8, 9, 10, 12 and 15, Mr. Pavithran A. V.,
 learned counsel for Respondent No.2, Mr. Siddharth Malik holding for
 Mr. V. Rodrigues, learned counsel for Respondent No.13 and Mr.
 Vibhav Amonkar, learned counsel for Respondent No.14.

2. Mr. Nadkarni, learned counsel for the Petitioners states that
 the Respondents have been duly served. Most of the Respondents

appeared through counsel except Village Panchayat which has chosen not to put appearance despite being served.

3. The Petitioners' basic grievance is that the statutory Authorities are not looking into the complaints made by the Petitioners in the context of catering business undertaken by the Respondent No.14 through the premises which the Petitioners claim are residential.

4. On 9th March 2021, we made the following order :-

“Heard Mr. Yogesh Nadkarni, learned Counsel for the petitioners, Mr. Manish Salkar, learned Government Advocate for the respondents no. 1, 4, 5, 6, 7, 8, 9, 10, 12 and 15, Mr. Pavithran A.V, Advocate for the respondent no.2, Mr. Vivek Rodrigues, learned Counsel for the respondent no.13 and Mr. Vibhav Amonkar, learned Counsel for the respondent no.14.

2. Despite our repeated orders, there is no report from the Health Officer and the Directorate of Food And Drugs Administration. Accordingly, the Health Officer and The Directorate of Food And Drugs Administration to once again visit the site in question and if they find that the catering activities are undertaken illegally, to forthwith take action in the matter. The Health Officer and the Directorate of Food And Drugs Administration to now file a report in this Court by 16.03.2021. If, for any reason, the inspection cannot be held or the report cannot be filed, the two authorities to remain personally present in the Court and explain as to why our repeated orders are disobeyed.

3. The record, clearly indicates that as of date, the respondent no.14 does not have consent to operate in terms

of the Water (Prevention And Control of Pollution) Act, 1974 and Air (Prevention And Control of Pollution) Act, 1981.

4. The record indicates that the Goa State Pollution Control Board (GSPCB) had conducted an inspection on 07.10.2019. The inspection report is on record and the conclusions read as follows:

'44. Conclusion:

1) The catering business is being carried out by Mr. Santosh Bhat in the name of M/s. Siddhi Caterers at Flat no.F-2, Block A, Mandarins Court, Gaulem Bhat, Chimbél Goa.

2) The catering unit M/s Siddhi Caterers does not have consent to operate of the Board. The board may take necessary action against the catering unit for operating without consent to operate.

3) Direct discharge of sewage water was observed into the nallah located adjacent to the plot from the premises of the mandarin court complex, Chimbél Goa.'

5. Despite the inspection report, the GSPCB took its own time of about 8 month to issue show cause notice dated 02.06.2020 to the respondent no.14. The show cause notice was unduly generous to the respondent no.14 and required the respondent no.14 to submit online application for consent within 7 days.

6. No application even seeking consent to operate was made by the respondent no.14. As a result, on the same date, i.e. on 02.06.2020 the GSPCB let off the respondent no.14 by imposing a paltry fine of only ₹4000/-. There were no further directions for stopping the activity which the respondent no.14 was bent upon continuing without any consent to operate.

7. The petitioners have placed on record a letter dated 16.06.2020 addressed by the respondent no.14 to the Member Secretary of GSPCB in which, he has sought for six months' time to apply for consent to operate catering services in a property which is, prima facie, a residential apartment.

8. Despite the expiry of these six months period, till date, there is not even any application made seeking consent to operate.

9. Mr. Vibhav Amonkar, learned Counsel for the respondent no.14, states that such application will be made within a week from today. According to us, the respondent no.14 may take his own time to make such application for consent to operate. However, in the meanwhile, the respondent no.14 cannot insist upon continuing his catering activity in the suit premises which is, prima facie, a residential flat. The authorities despite this position being brought to their notice repeatedly, appear to be not interested in taking any action against respondent no.14.

10. In the aforesaid circumstances, we restrain the respondent no.14 from undertaking any catering activities whatsoever from the suit premises until the respondent no.14 actually obtains consent to operate and further, obtains leave of this Court.

11. Mr. Manish Salkar, learned Government Advocate undertakes to communicate this order to the Health Officer, Primary Health Centre at Bambolim-Goa and to the Directorate of Food And Drugs Administration. Mr. Salkar to also communicate this order to the other respondents whom she represents in this matter.

12. We now place this matter on 16.03.2021 for

compliance by the Health Officer and the Directorate of Food & Drugs Administration.”

5. Today, Mr. Salkar, learned Government Advocate tenders affidavits of the Medical Officer and Director of Food and Drugs Administration. He has submitted that necessary clearances were issued by the two Authorities relying almost entirely on the Panchayat NOCs. He submits that if the Panchayat revokes its NOCs then, even these Authorities will revoke the permissions granted.

6. Mr. Amonkar, learned counsel for Respondent No.14 points out that there is nothing illegal in the activities undertaken on a small scale by the Respondent No.14. He states that the Respondent No.14 has applied for and obtained permissions from various Authorities basically by way of abundant caution. He, therefore, submits that no sooner the consent to operate is issued by the GSPCB, the Respondent No.14 ought to be allowed to resume the operation.

7. Today, we are basically concerned with the inaction on the part of the Authorities in dealing with the complaints made by the Petitioners. At this stage, we are not at all concerned with the issue as to whether the complaints have merits or not.

8. Accordingly, we direct the Respondent Nos. 2, 3 and 10 to look into the complaints made by the Petitioners. At this stage, Mr.

Nadkarni points out that leave may be granted to the Petitioners to file a comprehensive complaint to the three Authorities setting out all particulars in details. He states that such a comprehensive complaint will be filed before the three Authorities within a week from today. If such a complaint is filed then, the Respondent Nos. 2, 3 and 10 to look into the same and dispose of the same in accordance with law and on its own merits. Needless to add that the Authorities will comply with the principles of natural justice and fair play. In the peculiar facts of this case, opportunity of hearing may also be granted to one of the representatives of the Petitioners. However, it is made clear that the Petitioners should not delay the proceedings before the Authorities. The Authorities to dispose of the complaint as expeditiously as possible and in any case within a period of maximum two months from the date they notify the Respondent No.14 of the date of hearing. The Authorities are expected to dispose of the complaint one way or the other on its own merits at the earliest.

9. The Respondent No.14 is restrained from undertaking any activities of catering through the suit premises until he obtains a consent to operate from the GSPCB or until the GSPCB certifies that such consent is unnecessary. However, if the decision of the GSPCB is in favour of the Respondent No.14, then, the same should not be implemented for a period of 15 days from the date of its communication to the Petitioner No.1.

10. We make it clear that we have not examined the rival contentions on merits and therefore, all contentions of all parties are left open for determination by the aforesaid Authorities.

11. This petition is disposed of in the aforesaid terms.

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

SMT. M. S. JAWALKAR, J.

M. S. SONAK, J.

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