

**IN THE HIGH COURT OF BOMBAY AT GOA.**

**LD-VC-CW-257 of 2020**

Gregory Daniel B. Shah Thr.  
POA Keshawanand Devidas  
Morajkar

...Petitioner.

Vs

State of Goa, Thr. Chief  
Secretary and anr.

...Respondents.

Shri Shivan Desai, Advocate for the petitioner.  
Shri Devidas Pangam, Advocate General with Shri Prashil Arolkar,  
Additional Govt. Advocate for the respondents.

**Coram:- DAMA SESHADRI NAIDU, J.**

**Date:4<sup>th</sup> December 2020.**

P.C.

**Introduction:**

An overseas citizen of India purchases a piece of property to be used as a residential building. He secures the Government's approval and secures an excise licence. Later, the excise authority cancels the licence on the premise that he has suppressed the nature of the licensed building. After the initial vacillation, the Government backs the licence. But the Excise Department stands resolute: the petitioner cannot have the licence.

2. The question is, should the Government's view guide the Excise Department on the matter, or can it act independently? If it can act independently, was it right in cancelling the petitioner's excise licence?

**Facts:**

3. The petitioner held an excise licence. It was to vend the liquor in a restaurant he had been operating. In other words, the petitioner was allowed to have a bar in a restaurant. As the petitioner is a person of Indian origin ("PIO"), now called Overseas Citizen of India (OCI), he

applied for the Government's approval to have the liquor licence. Then, through its order, dated 15.1.2015, the Government granted that approval. After that, the petitioner applied to the Excise Department and secured the licence.

4. As the petitioner had been successfully running the bar and restaurant, he had his excise licence renewed annually. But in January 2018, the Excise Commissioner wanted the petitioner to show cause why his licence should not be cancelled. It was on the premise that he suppressed a material fact while securing the licence: the building in which he was running the bar was, in the first place, allowed to be used exclusively as a residential building. Then, in the third week of January 2018, the petitioner replied.

5. Despite the reply, the Excise Commissioner, as an interim measure, suspended the licence on 2.2.2018. Aggrieved, the petitioner filed Writ Petition No.186/2018, contending that the Excise Commissioner had not heard him before he suspended the licence. So, through judgment, dated 16.2.2018, this Court set aside the interim suspension.

6. Thereafter, the petitioner filed an additional reply taking a few more pleas in response to the show-cause notice. But, in the end, the Excise Commissioner, through an order dated 22.3.2018, cancelled the excise licence.

7. Under Section 40 of the Goa Excise Duty Act, 1964, the Chief Secretary of the Government of Goa is the appellate authority. That said, the Chief Secretary is said to have been seized of a connected issue. As a result, he recused himself from taking up the appeal. Then, the petitioner filed Writ Petition No.693/2018. This Court, through its judgment dated 21.8.2018, held that the Government had ample powers to designate another official as an appellate authority.

8. In the meanwhile, on 16.8.2018, the Government also revoked the initial approval it granted in 2015. Soon, in tune with this Court's

judgment in WP No.693 of 2018, the Government constituted appellate authority. That appellate authority dismissed the petitioner's appeal through its order, dated 31.10.2018. Eventually, the petitioner filed Writ Petition No.64/2019, assailing both the orders: the Government's order, dated 16.8.2018 revoking the approval; the appellate authority's order, dated 31.10.2018, affirming the cancellation of the licence.

9. Through judgment, dt.8.4.2019, the High Court quashed both the orders and directed the Government to hear the petitioner and, then, rule on the dispute: first, on whether the Government was right in revoking its approval; second, whether the appeal had any merit. In the wake of this judgment, dated 8.4.2019, the Secretary, Finance, heard the matter and forwarded the report to the Government. Then, the Government, through its order dated 27.11.2019, held that the petitioner did not suppress any material fact and that its earlier revocation could not be sustained. Thus, it has restored the permission it granted to the petitioner in 2015. Later, the appellate authority took up the appeal but held that cancellation of the licence by the Excise Commissioner is in order and it does not call for any interference.

10. Aggrieved, the petitioner has filed this Writ Petition

11. Heard Shri Shivan Desai, the learned counsel for the petitioner; and Shri Devidas Pangam, the learned Advocate General for the State, including the second respondent.

**Discussion:**

**What are the Questions to be Considered?**

12. Here, I need to examine whether the excise authority granted the licence, in the first place, only as a consequence to the Government approval of 2015 or whether they have granted it independently strictly under the Goa Excise Duty Act 1964. I also need to examine, as a consequence, whether the reversal of revocation by the Government binds the excise authorities. Should they follow the Government's view on the

controversy and restore the licence? Ultimately, has the petitioner violated any conditions and thus invited the licence cancellation?

**Analyses:**

13. True, the petitioner, as a PIO, initially secured the Reserve Bank of India permission in 1993 to purchase a piece of property in India and to carry on business if he desired. Then, in 1996, he purchased some property. Thereafter, on 15.7.1997, under the then FERA Regulations, the RBI allowed the petitioner to use that property only for residential purposes.

14. In 2015, the petitioner, again as a PIO, applied to the Government and got its approval for securing an excise licence. When I queried with the petitioner's counsel about the relevant provision of law that empowers the Government to grant such permission, the learned counsel has been candid enough to inform me that there is no specific provision in that regard. But it seems to be the practice the Government insists on when the applicant for excise licence is a PIO.

15. That said, the Goa Excise Duty Act, 1964, is a code concerning the grant of licences for all purposes related to liquor. No provision in this Act requires any applicant to seek Government approval as a pre-condition before that person applies for a licence under the Excise Act. So, I cannot hold that the Government approval of 2015 in any way affects the excise authorities to exercise their powers under the Excise Act. Nor can I hold that the Government's withdrawing or restoring this permission impinges on the excise authority's discretion under the Act. The necessary corollary is that the granting of the excise licence is not a consequential step to the Government's approval. That is, the sustenance of an excise licence or its cancellation must be within the parameters of the Excise Act.

16. Section 15 of the Goa Excise Duty Act deals with licences and permits, and section 16 with powers to cancel the licence. It is relevant for us to examine section 15, which reads thus:-

**15. Licences and permits.**— (1) Every licence or permit under this Act shall be granted,—

(i) by such officer,

(ii) for such period,

(iii) *subject to such conditions or restrictions, and*

(iv) *in such form and containing such particulars, as may be prescribed:*

*[Provided that the Government may, if it considers necessary in the public interest so to do, by order, published in the Official Gazette, direct that no licence shall be granted for manufacture or sale of any or all excisable articles and foreign liquors within [the State] or any part thereof.]*

*[(2) No licence or permit under this Act shall be granted or no licence shall be transferred from one licensed premises to another or from one licensee to another person or no label shall be recorded/renewed except on payment of fees at such rates as may be fixed by the Government, from time to time, by notification published in the Official Gazette.*

Provided that if any person seeks transfer of licence in his name and subsequently intends to transfer the same to some other licensed premises under the provisions of the Act and rules made thereunder or vice-versa, the transfer fees will be applicable in such case as one transaction only.

(italics supplied)

17. Under section 15 of the Excise Act, the licence ought to be granted subject to the statutorily prescribed conditions or restrictions. That apart, the proviso empowers the Government "*in the public interest*" to *direct that no licence shall be granted for manufacture or sale of any or all excisable articles and foreign liquors within the State or any part thereof.*" This is a generic provision aiming at prohibition. It by no means mandates that every applicant should have the Government's imprimatur before he applies to the Excise Department.

18. Rule 90 of the Goa, Daman and Diu (Excise Duty) Rules, 1964, lays down the procedure for applying and securing the licence. For our purpose, subsection 4 (d) (i) assumes importance; and that provision reads thus:

(4) (a) No licence shall be granted to an applicant if the premises in which he proposes to open liquor shop are within a radius of 100 meters from [an Educational Institution or a place of worship]

(b) Omitted

(c) No licence shall be granted to an applicant if the premises in which he proposes to open liquor shop is within a radius of 100 meters from a Harijan Basti or a Labour Colony:

(d) *No licence shall be granted to an applicant if the premises in which he proposes to open liquor shop is,-*

*(i) situated in a residential building, except a building owned by the applicant where no residences other than that of the applicant exist or situated in a market/commercial complex belonging to the local authority/local body/Government/institution or situated in a licenced hotel/restaurant/resort, located in a Settlement Zone of the Village Panchayat areas, specified under a relevant Plan notified under the Goa Town and Country Planning Act, 1974 (Act No. 21 of 1975), as in force;*

19. Besides, Rule 92 of the Goa, Daman and Diu (Excise Duty) Rules, 1964, deals with 'occasional licences', and Rule 100 with residential premises vis-à-vis liquor licence. That provision reads:

**100. Licensed premises for sale of liquor shall not have connecting link with residential premises:** No licensed premises for sale of liquor shall have any connecting link with residential premises.

20. The thrust of the petitioner's arguments is that there has been no suppression of any material fact. In the alternative, he has contended that once the Government has restored its 2015 permission, there is nothing else the excise authority could do except renewing the licence.

Indeed, an authority may have passed an order on one ground, and the Court may find that ground unsustainable on that ground. But, on occasions, the Court may also find that the order is sustainable on another valid legal ground which may not have been in the authority's contemplation when he passed that order. Under those circumstances, Court can refuse to interfere with the order, for there remains a

sustainable ground to justify the official decision, the authority's flawed reasoning notwithstanding.

21. Here, the question is not whether the Excise Commissioner should follow the Government directives. The question is about whether the nature of the building disentitles the petitioner to excise licence. In other words, has the petitioner secured the excise licence violating any statutory condition?

22. Undoubtedly, the property the petitioner purchased was permitted to be used as a residential building. That accepted, the question boils down to this: can the petitioner vend liquor even in the name of a bar and restaurant in a residential building? I reckon Rule 90 of Goa, Daman and Diu (Excise Duty) Rules, 1964, answers that. As we have already extracted sub-rule (4) of Rule 90, its clause (d) (i) prohibits the excise authority from granting any licence to an applicant if the building in which he proposes to open a liquor shop is situated in a residential building. Had the rule stopped there, it would not have presented any difficulty for the Court to accept as correct the impugned order passed by the Excise Commissioner. But the same provision provides for an exception.

23. That exception is to the effect that if the applicant-owned residential building has "no residences other than that of the applicant exist or situated in a market/commercial complex belonging to the local authority/local body/Government/institution or situated in a licenced hotel/ restaurant/ resort, located in a Settlement Zone of the Village Panchayat areas", the licence can be granted. So, to my mind, even a residential building qualifies to be a place to vend liquor if it meets any of these conditions:

- (a) that building has no other occupants than the applicant's family resides there (if we may ignore the infelicitous language of that provision);

(b) that residential building is situated in a market or commercial complex belonging to a local authority, local body, Government, institution, or situated in a licenced hotel, restaurant, resort.

(c) The additional condition is that the residential building must be in a Settlement Zone of the Village Panchayat areas.

24. Here, the petitioner's claim stands covered by both condition (a) and condition (c). It is a residential building with no other occupant. And this residential building, as condition (c) requires, already has a restaurant. In a sense, whatever Rule 90 (4) (a) does stands undone by Rule 90 (4) (d) (i). But that is what the statutory mandate is. Period.

25. Here, the respondents do not dispute that in the petitioner's residential building, no other third-party lives. Besides, in that building, there already exists a restaurant. Under these circumstances, I cannot but conclude that the petitioner's case falls within the exceptions provided under Rule 90 (4) (d) (i).

26. That said, indeed, Rule 100 prohibits licenced premises for the sale of liquor having any "connecting link" with a residential building. First, Rule 90 controls Rule 100, rather than the other way round. If a building stands covered by Rule 90 (4) (d) (1), then Rule 100 does not apply. Besides, the residential building per se can have the excise licence; what Rule 100 prohibits is that the licensed premises (even if it were otherwise a residential building) should not have any connecting link with a pure residential premise.

27. I reckon, therefore, Rule 100 must be read in conjunction with Rule 90. Read harmoniously, Rule 100 does not whittle down the statutory breadth of Rule 90 of the Rules.

**Conclusion:**

28. Under these circumstances, I hold that the second respondent had erred in cancelling the petitioner's licence. So, I set aside the



impugned order and, consequently, direct the second respondent to restore the petitioner's licence.

29. If the licence has already expired, the authority concerned will consider the petitioner's application for its renewal. Such consideration must be subject to all other statutory conditions except those that have already been negated in this judgment.

**Result:**

The writ petition is allowed. No order on costs.

**DAMA SESHADRI NAIDU, J.**

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