

IN THE HIGH COURT OF BOMBAY AT GOA**LD-VC-OCW-90/2020**

Director of Tourism
Government of Goa,
having office at Paryatan Bhavan,
2nd floor, Patto, Goa.

... Applicant/Original
Respondent No.2

IN

1. The Indian Hotels Company
Ltd., a Company incorporated
under the provisions
of the Companies Act, 1888
and now governed under
Companies Act 2013,
having its registered office
at Mandlik House, Mandlik Road,
Colaba, Mumbai-400001,
through its duly constituted
Power of Attorney holder
Mr. Sabyasachi Dutta

2. Mr. Tukaram G. Machiv
son of late Mr. Gangaram Machiv,
61 years of age, married,
Shareholder of the Indian Hotels
Company Ltd., residing at Porbo Wado,
Calangute, Bardez, Goa.

... Original Petitioners

Versus

1. The State of Goa
through Chief Secretary, Government of Goa,
having its office at Porvorim-Goa.

2. Director of Tourism,
Government of Goa,
having office at Paryatan Bhavan,
2nd floor, Patto, Goa.

3. North Goa Planning and Development
Authority, 1st Floor, Archdiocese,
Mala Link Road,
Panaji-Goa.

... Original Respondents

Mr. D. Pangam, Advocate General along with Ms. M. Correia, Addl.
Government Advocate for the State/Director of Tourism.
Mr. R. Dada, Senior Advocate along with Mr. Iftikar Agha, Advocate
for the Original Petitioners.

IN
LD-VC-CW-69/2020

1. The Indian Hotels Company
Limited, a company incorporated
under the provisions
of the Companies Act, 1888
and now governed under
Companies Act 2013,
having its registered office
at Mandlik House, Mandlik Road,
Colaba, Mumbai-400001,
Duly constituted by its
Power of Attorney holder
Mr. Sabyasachi Dutta.

2. Mr. Tukaram G. Machiv
son of late Mr. Gangaram Machiv,
61 years of age, married,

shareholder of The Indian Hotels
Company Limited residing at Porbo Vado,
Calangute, Bardez, North, Goa, 403516.

... Petitioners

Versus

1. State of Goa through
Chief Secretary, Govt of Goa
having its office at Porvorim-Goa.

2. Director of Tourism,
Government of Goa,
having his office at Paryatan Bhavan,
2nd floor, Patto, Panjim Goa.

3. North Goa Planning and Development
Authority, 1st Floor, Archdiocese,
Mala Link Road,
Panaji-Goa.

... Respondents

Mr. R. Dada, Senior Advocate along with Mr. Iftikar Agha, Advocate
for the Petitioners.

Mr. D. Pangam, Advocate General along with Ms. M. Correia, Addl.
Government Advocate for the Respondents.

Coram:- M.S. SONAK &
SMT. M. S. JAWALKAR, JJ.

Date:- 14th August, 2020

P. C.:

Heard Mr. R. Dada, learned Senior Advocate along with Mr.
Iftikar Agha for the original petitioners and Mr. D. Pangam, learned

Advocate General along with Ms. M. Correia, Additional Government Advocate for the State/Director of Tourism.

2. This is an application which seeks modification of our order dated 30.06.2020. In our order dated 30.06.2020, we had only extended the time for hearing before the Director of Tourism.

3. Now, it is pointed out by the learned Advocate General that the hearing in this matter is in fact required to be given by the Secretary (Tourism), in terms of Clause 19 of the agreement dated 19.06.1997 between the parties. He therefore submits that it is only appropriate that this position is clarified in the order dated 30.06.2020.

4. Mr. Dada, the learned Senior Advocate for the original petitioners, opposes grant of any reliefs in this application. He submits that since the notices were given by the Director of Tourism, it is only appropriate that the Director of Tourism hears the parties. In the alternate, he points out that if, the Secretary (Tourism) wishes to hear the parties, then, the Secretary (Tourism), is required to issue a fresh notice in the matter.

5. According to us, the contention raised on behalf of the respondents is to say the least, hyper-technical. In fact, a conjoint

reading of clauses 18 and 19 of the agreement dated 19.06.1997 makes it clear that notices can be issued by the Director of Tourism but ultimately, the decision will have to be taken by the Secretary (Tourism). If, the Director of Tourism is to give the hearing and the Secretary (Tourism) is to take a decision, then, obviously, an objection will be raised to grant of hearing by one authority and taking of decision by another authority. In order to obviate such a situation, our order needs to be clarified.

6. The notice issued to the original petitioners clearly gives them an idea of the case which they are required to meet. The original petitioners have already been granted opportunity to file their response to the notice and the time limit for filing such response is yet to expire. In these circumstances, we see no difficulty in granting this application and clarifying that the hearing will now have to be given by the Secretary (Tourism).

7. Mr. Dada, the learned Senior Advocate points out that the earlier response to the notice issued in the year 2013 was filed before the Director of Tourism. He therefore seeks a clarification as to whether such response can be relied upon before the Secretary (Tourism). Learned Advocate General concedes that such reliance can obviously be placed.

8. Even according to us, now that the Secretary (Tourism) is to give a hearing to the original petitioners, obviously, whatever responses that the original petitioners may have filed or may file before the Director of Tourism, will have to be taken into consideration by the Secretary (Tourism) whilst disposing of the show cause notice.

9. At the request of Mr. Dada, we clarify that the additional response in terms of our order dated 30.06.2020 can as well be filed before the Secretary (Tourism) now that the hearing has to be given by the Secretary (Tourism). Again, at the request of Mr. Dada, learned Advocate General states that the necessary intimation regards the appearance before the Secretary (Tourism) which is scheduled on 21.08.2020 will be given to the original petitioners. He clarifies that the hearing will be on 21.08.2020 itself and the details about the whereabouts of the chamber of the Secretary (Tourism) will be provided, as requested.

10. Our order dated 30.06.2020 is therefore modified in the aforesaid terms and is required to be construed accordingly.

11. The application for modification is disposed of in the aforesaid terms.

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

SMT. M. S. JAWALKAR, J.

M. S. SONAK, J.

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