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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.199 of 2024

1. Smt. Socorina Joanita Pereira
R/o H. No. 326,
Godinho Vaddo,
Majorda, Salcete-Goa.

2. Shri. Augustino Sheltan Da Silva,
No. 166/3, Adda Vaddo,
Majorda, Salcete-Goa.

..... Petitioners.

Versus

1. The State of Goa,
Through its Chief Secretary,
Having office at the Secretariat,
Porvorim-Goa.

2. The Director of Tourism,
Directorate of Tourism and Competent
Authority Government of Goa,
2nd Floor Paryatan Bhavan,
Patto Plaza, Panaji,
Tiswadi-Goa.

3. The Captain of Ports
Having its office at GR2H+h48,
Dayanand Bandodkar Road,
Patto Colony,
Panaji, Goa 403001.

4. Mr. Menino Fernandes,
Major in age,
And his wife;

5. Benedicta Fernandes,
Major in age,
Both residents of H. No. 217,
Pacheco waddo, Majorda,
Salcete, Goa.

6. The South Goa Watersports Association,
Through its President Domingos Rodrigues,
R/o H. No. 367, 4th Ward A, Colva,
Salcete-Goa.

7. Police Inspector,
Colva Police Station,
Salcete-Goa.

.... Respondents.

Mr Nigel da Costa Frias with Ms Barbara Andrade and Ms Sonadevi Nishad, Advocates for the Petitioners.

Mr Prashil Arolkar, Additional Government Advocate for Respondents No.1, 2, 3 and 7.

Mr Anacleto Viegas with Mr Bruce Fernandes, Ms V. Prabhudessai and Mr Mark Valadares, Advocates for Respondent Nos. 4 and 5.

Mr Gaurish Agni with Mr Kishan Kavlekar, Advocates for Respondent No.6.

CORAM:	M. S. KARNIK & VALMIKI MENEZES, JJ.
DATED:	8TH AUGUST 2024.

JUDGMENT: (Per Valmiki Meneses, J.)

1. By this petition under Article 226 of the Constitution of India, the Petitioners seek quashing of the communications bearing No. B/14022/PART/229 and No. B/14022/PART/230 both dated 19/01/2024 issued by the Respondent No. 3; the Petitioners further seek appropriate direction to set aside the condition imposed by the Respondent No. 3 whilst renewing certificate dated 09.02.2024, changing the zone for operating the two parasailing boats owned by the Petitioners from Majorda beach to Utorda beach and to revert the Petitioners' zone of operation from Utorda and Betalbatim/Gonsua Beach back to Majorda beach; and for a further direction to Respondents No. 2 and 3 to implement the Policy for Regulation of Water Sports in Goa, dated 19.11.2020 and to implement the queue system with uniformity at Majorda beach in South Goa.

2. The background facts as extracted from the pleadings, which are relevant for the decision in this petition are as under:

- i. Petitioner No.1 claims to be the owner of parasailing boat No.GOA-032-WS whilst Petitioner No.2 is the owner of parasailing boat bearing No.GOA-190-WS; these boats were respectively run under the name of Jospat Adventure Water Sports and Sheltan Water Sports. The Petitioners claim that they have always been operating these boats from Majorda beach since the day they started operations.

- ii. It is averred in the petition that the boat owned by the Petitioner No.1 was purchased on 21.11.2019, pursuant to which its zone of operation was changed from Colva beach, where its erstwhile owner was plying the same, to Majorda beach, whilst the boat owned by Petitioner No.2 was purchased on 21.09.2017, pursuant to which its zone of operation was changed from Varca beach, where its earlier owner was plying the same, to Majorda beach. It is further averred that vide letter dated 13.11.2020, without affording the Petitioners any hearing, Respondent No.3, the Captain of Ports (COP), the registering authority changed the zone of operation of the boats of Petitioners from Majorda beach respectively to Utorda beach and Betalbatim Gonsua beach.
- iii. The order dated 13.11.2020 passed by the COP, changing the zone of operation from Majorda beach to Betalbatim beach, was challenged by the Petitioners vide Writ Petition No.488/2022 before this Court. It was further averred in the petition that during the pendency of the petition, the Petitioners requested the COP vide letter dated 22.08.2022 to relocate their boats to the original zone and to renew their licences. Since it was submitted on behalf of the COP, that it would be considering the Petitioners' application dated 22.08.2022 for relocation,

the Writ Petition No.488/2022 was withdrawn on 14.02.2023 and thereafter, the COP by order dated 11.04.2023 approved both Petitioners request under application dated 22.08.2022 for relocation/change of zone of operation from Utorda beach to Majorda beach and from Betalbatim beach to Majorda beach. A fresh renewal of NOC changing the zone of operation to Majorda beach was issued by the COP on 24.04.2023. Subsequent thereto, several disputes arose amongst the Petitioners and the contesting Respondents Nos. 4 and 5, pursuant to which several police complaints of assault and insult were filed by these parties against each other. The last such complaints were filed on 21.10.2023 and 24.10.2023. Despite intervention of the Respondents No.2 and 3 to resolve the issue, an impasse continued amongst these feuding parties after which the Petitioner No.2 addressed two letters on 31.10.2023 to the Respondent No.2, Director of Tourism (DOT) requesting that the queue system propounded by the policy of the Tourism Department, be implemented at Majorda beach to avoid any undue incidents.

- iv. By letter dated 04.05.2023, the Respondents No.4 and 5 addressed a letter to the DOT objecting to the grant of fresh licences/transfer/change of zone to the operation

of the vessels belonging to the Petitioners No.1 and 2 respectively to Majorda beach from Utorda beach and Betalbatim beach; a notice dated 15.05.2023 came to be issued by the DOT to the Petitioners calling for a hearing of the aforementioned objections on 19.05.2023, which were ultimately disposed of by an order dated 08.09.2023, wherein the contesting Respondents were directed to approach the COP for redressal of the grievance and the notice dated 15.05.2023 issued to the Petitioners was discharged.

- v. Complaint came to be recorded on 07.11.2023 by the Respondents No.4 and 5 before the COP alleging that complaints/FIRs have been filed at the Colva Police Station against the Petitioners for alleged acts of assault, claiming revocation of the orders passed by the COP for change of zone of operation in favour of the Petitioners. A show-cause notice dated 13.11.2023 was issued by the COP to the Petitioners on the above complaint calling for their written reply and fixing a personal hearing in the matter on 20.11.2023. In their reply, the Petitioners claimed that they had not breached any conditions of the permissions granted to them and requested for dropping of the proceedings. The DOT also attempted to intervene by holding a meeting on 15.01.2024 of all the

parties concerned, in the presence of the Deputy COP and the concerned Police Officers, but there was no finality to the impasse amongst the parties. Ultimately, the impugned communications both dated 19.01.2024 were issued to the Petitioners by the COP directing the Petitioner No.1 to shift the zone of operation of parasailing boat No.GOA-032-WS from Majorda beach to Utorda beach with immediate effect and Petitioner No.2 to shift the zone of operation of parasailing boat No.GOA-190-WS from Majorda beach to Betalbatim Gonsua beach.

3. After notice was issued in the petition, the Respondents No.4 and 5 filed affidavit in reply dated 18.03.2024 wherein the main averments pertain to the details of the cases/FIRs registered against the Petitioners for alleged acts of violence. In para 12 of the affidavit, these Respondents have stated that Writ Petition No.488/2022 was withdrawn by the Petitioners after a suggestion was made that a common queue system would be adopted for all three beaches with one spot for each family. It was further averred in the same paragraph that on the basis of this suggestion, the Petitioners decided to withdraw the petition and abide with the directions issued by Respondent No.3.

In their affidavit in rejoinder, at para 7 thereof, the Petitioners averred that Writ Petition No.488/2022 was withdrawn on

14.02.2023, and thereafter, based on the application dated 22.08.2022 referred above, a change in zone was granted to the Petitioners under order dated 11.04.2023 of the COP.

4. The main grounds raised in the petition to the challenge to communications dated 19.01.2024 as argued by Shri Nigel da Costa Frias for the Petitioners are:

- i. That the communication discloses no valid reason for directing a change of zone of operation nor was the same issued after affording the Petitioner a proper hearing.
- ii. The impugned communication changing the zone of operation is not based on any cogent material and operates against the Water Sports Policy notified on 19.01.2023, which seeks a uniformity in application of the queue system across all beaches in Goa, and creates a monopoly at the beach wherein Respondents No.3 and 4 operate; the communications are therefore opposed to the Government's policy contained in the Notification dated 19.01.2023 published in the Official Gazette, Series I No.42 (Water Sports Policy).

It was submitted that the impugned communications are in violation of the Petitioners' fundamental rights under Article 14, 19 and 21 of the Constitution of India.

5. Countering these submissions, learned Advocate Shri Anacleto Viegas for the contesting Respondents No.3 and 4 makes the following submissions:-

- i. Since Writ Petition No.488/2022 was abandoned by the Petitioners without seeking leave to file a fresh petition on the same cause of action, which was a challenge to the order directing change of zone, the present petition would be barred by the principles of constructive res judicata, being based upon the same old cause of action.

Reliance was placed on the judgements of the Supreme Court in *Sarguja Transport Service vs. State Transport Appellate Tribunal* reported in 1987(1) SCC 5 and *M.J. Exporters Private Limited vs. Union of India* reported in (2021) 13 SCC 543 to support the above contentions.

- ii. That the relief to direct the Respondents No.2 and 3 to implement the Water Sports Policy 2020 and implement a queue system for setting up of a kiosk at Majorda beach to manage the queue system at that beach ought not to be granted since such an order would directly affect the smooth running of the business of the Respondents No.3 and 4 at this beach; this submission was based on the premise that Respondents No.3 and 4 should be allowed

exclusively to carry out operations of water sports at this beach as they have done for several years.

6. The Water Sports Policy 2020 was formulated for systematically organizing and regulating the tourism industry in the State of Goa. Under this policy, the Government of Goa designated the Department of Tourism to function as a Nodal Department for the safe and smooth operation and regulation of water sports in the entire State and all other related departments including the Captain of Ports (COP), Department of Fisheries, Department of River Navigation and the Police Department are required, under this policy to coordinate and assist the Department of Tourism in the smooth discharge of its functions for regulation of water sports activities.

The salient features of this policy contained in clauses 6 to 26 are the following:

- i. All water sports operators are required to register themselves under the Goa Registration of Tourist Trade Act, 2011 with the DOT; these include every operator for both rides and parasailing. The operators are required to obtain due permission from the COP or other competent authority for operating vessels for use in water sports activities.
- ii. The policy provides for the manner and mode of obtaining safety certificates from competent agencies to

follow prescribed safety standards and norms for the vessels, craft and equipment used in water sports operations.

- iii. It provides for the mechanism for punishment to erring operators and cancellation of registration of such operators for causing harm/injury or death during operations.
- iv. It provides for registration number plates to be assigned to each boat/equipment and specifications to be issued for the capacity of boats by Mercantile Marine Department/COP, with clear Area of Operation to be specified by the operator according to the permission obtained from the COP.
- v. It provides for training of personnel and areas within which certain water sports operations like jet skis and speed boats are prohibited at certain distances from the beachfront and within certain demarcated zones and corridors. It also provides for safety measures and safety equipment to be carried on various craft and for restrictions on timings for operation of these activities.
- vi. Under clause 24 of the policy, in order that water sports operators follow a systematic approach, the Department of Tourism is required to conduct water sports activities

on beaches within demarcated zones and corridors through a queue system. Under the queue system, the Government of Goa may designate or appoint an agency through the DOT for operation and management of water sports activities.

- vii. The implementation of the queue system contemplates the installation of a fully functional kiosk at each beach which will issue tickets and ensure a single point of collection of fees for various water sports, charging thereon applicable taxes. The ticketing system would be operated using suitably designed software which would monitor the automatic implementation of the queue system so that all empanelled operators get a fair amount of business by rotation. The tickets could also be sold through the department's website. Any charges collected on the day of activity would be directly transferred to the accounts of the water sports operators proportionately, via the Internet.

7. The Water Sports Policy, if implemented in its true letter and spirit, would ensure the equitable distribution of the revenue generated at each beach in a fair, transparent and seamless manner, through a single agent. The Policy also ensures that every water sports operator has a fair chance to operate his craft/vessel from a beach on rotation and no monopolies would be created where a particular

family or group of water sports operators would be assigned operations at a single beach.

8. Before we proceed to deal with the submissions on the merits of the matter, we proceed to deal with the preliminary objection that the petition is barred by the principles of constructive res judicata. There is no doubt in our mind that these principles would apply, as in suits, to subsequent writ petitions, as has been held in *M.J. Exporters Private Limited* (supra) cited by the Respondents. However, for the principles of res judicata to apply and bar a subsequent writ petition, one would have to examine the circumstances under which the first petition was disposed of, as also whether the cause of action in both proceedings was one and the same.

Writ Petition No.488/2022 was filed to challenge the order dated 13.11.2020 passed by the COP, changing the zone of operation from Majorda beach to Betalbatim beach. During the pendency of the petition, the Petitioners requested the COP vide letter dated 22.08.2022 to relocate their boats to the original zone and to renew their licences. On the submission on behalf of the COP, that it would be considering the Petitioners' application dated 22.08.2022 for relocation, the Writ Petition No.488/2022 was withdrawn on 14.02.2023. There was no abandonment of the petition. Thereafter, the COP by order dated 11.04.2023 approved both the Petitioners' request under application dated 22.08.2022 for relocation change of zone of operation from Utorda beach to Majorda beach and from

Betalbatim beach to Majorda beach. A fresh renewal of NOC changing the zone of operation to Majorda beach was issued by the COP on 24.04.2023. In that view of the matter, there was no further cause for the Petitioners to have a grievance. A fresh cause arose for the Petitioners by the passing of the impugned orders challenged in this petition. The principles of constructive res judicata would not apply where the cause of action is a fresh one independent of the first cause, as is the case herein. We, therefore, reject this contention raised by the Respondents.

9. On examining the impugned communications issued to the Petitioners by the COP, what stands out is that the orders are totally bereft of any reasoning or reference to the material that may have been placed before the COP or being considered by him whilst passing the impugned communications. The only reference in the order appears to be in the subject, where the wordings, “Law and Order problem at Majorda Beach” appears, though there is no reference in the decision to any particular incident or allegation against the Petitioners. No doubt, there are complaints and counter-complaints between the Petitioners and the contesting Respondents filed at various Police Stations alleging acts of assault and intimidation, but those could be dealt with under regular penal provisions by the concerned authorities, and would be taken to their logical conclusion. Unless those cases end in a conviction of any of the Petitioners, which may disqualify them from continuing to hold a licence/registration to

operate their water sports activities, they could not form the basis for passing the impugned order.

10. The impugned orders convey that the decision of the COP is taken in public interest, without referring to the manner in which the act of the Petitioners could be in breach of any law. The impugned communications direct the Petitioner No.1 and Petitioner No.2 to respectively shift their boats and area of operation from Majorda beach to Utorda beach and Betalbatim beach. There are no reasons stated in the orders as to why this shift was required to a particular beach and why the change of zone of operation was required. This in itself is a totally arbitrary exercise of powers by the Respondent No.2.

11. Apart from the impugned orders being totally arbitrary and without reasoning, in our opinion, they are diametrically opposed to the Water Sports Policy referred to by us in the preceding paragraphs. The Water Sports Policy seeks to allow all operators to have a fair chance at earning from the tourism activities on a beach by following the queue system. Under the queue system, if the Petitioners and the Respondents No.3 and 4 were operating from the same beach, no monopoly would be created in favour of the Respondents No.3 and 4 and, in rotation, all four parties along with any other operators assigned to this beach would be entitled to run their operations in the same area by equitably distributing the proceeds of the water sports activities in a systematic manner through a kiosk to be run in accordance with the Policy.

By the impugned orders, the COP has in effect, allowed the Respondents No.3 and 4 to exclusively operate at Majorda beach, without any queue system, whilst directing the Petitioners to operate from certain other beaches. This in itself is an arbitrary exercise of powers by the COP, who, according to the Water Sports Policy, is not empowered to decide which boat or craft should operate from a particular beach. That in our view, would be decided by the Director of Tourism, who is the Nodal Agency under the Policy, who is required to implement the queue system at every beach, capping the number of trips in a day, through the queue system, based upon the carrying capacity of each beach.

12. In that view of the matter, the impugned communications dated 19.01.2024 of the Captain of Ports cannot be sustained and are required to be quashed and set aside. Consequently, since the impugned communications are hereby set aside, the Captain of Ports is hereby directed to revert the Petitioners' zone of operation for their respective parasailing boats back to the original zone of operation at Majorda beach.

13. We further direct the Government of Goa and the Director of Tourism, to implement the queue system contained in clause 24 of the Government's Water Sports Policy 2020 contained in the Notification dated 19.01.2023 published in the Official Gazette, Series I No.42. The Government of Goa under the aforementioned notification has published its Policy for Regulation of Water Sports in

the State of Goa on Majorda beach and all other beaches designated by the DOT for conducting water sports activities. The Respondents No.2 and 3 shall implement this policy on Majorda beach and all other beaches to which it applies by designating/appointing appropriate agencies to erect kiosks for dispensing tickets at one point on each of these beaches and to enforce/implement the Queue System so that all the empanelled water sports operators at each beach, including Majorda beach conduct their business by rotation. The tickets sold at these kiosks including the kiosk to be set up at Majorda beach shall be sold by such agency in tune with what is specified in clause 24 of the policy.

14. Rule is made absolute in terms of our directions in paras 11 and 12 above. No order as to costs.

VALMIKI MENEZES, J.

M. S. KARNIK, J.