

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.4741 OF 2007

Karnataka Live Band Restaurants
AssociationAppellant(s)

VERSUS

State of Karnataka & Ors. ...Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

1) This appeal is directed against the final judgment and order dated 19.04.2007 passed by the High Court of Karnataka at Bangalore in Writ Appeal No. 556 of 2007 (GM-POLICE) whereby the High Court dismissed the appeal filed by the appellant herein praying for setting aside the order

dated 09.02.2007 passed by the Single Judge of the High Court in Writ Petition No.27523 of 2005.

2) In order to appreciate the controversy involved in the appeal, it is necessary to set out the facts *infra* in detail including the background facts, which led to filing of this appeal.

3) The appellant is the Association registered under the Karnataka Societies Registration Act, 1960 and Rules framed thereunder. The Association is formed by the persons, who are engaged in the business of running the restaurants in various parts of the city of Bangalore (now Bengaluru).

4) In addition to serving food items/beverages to their customers, the owners of these restaurants also entertain their customers by displaying "Live Band Music" in their restaurants. Indeed, the purpose of providing the facility of "Live Band Music" is to attract more and more customers in the restaurants. In some restaurants, the "cabaret

dance” and “discotheque” are also performed to attract the customers.

5) The facility of “Live Band Music” and other two items in the restaurants gave a cause to the dispute, which led to filing of the writ petitions in the High Court of Karnataka in the year 1989 and later in appeal to this Court by the appellant-Association and some individual restaurants’ owners against the State. The dispute arose with the following background.

6) The Karnataka Police Act, 1963 (hereinafter referred to as “the Act”), apart from dealing with several other matters pertaining to police force/administration, also deals with the subject “Police Regulations” in Chapter IV of the Act.

7) Section 31, which falls in Chapter IV, deals with power to make, alter or rescind orders issued for regulation of traffic and for preservation of order in public places. This Section empowers the

Commissioner and the District Magistrate to make orders, alter or rescind subject to a caveat that it should not be inconsistent with the provisions of the Act.

8) The Commissioner and the District Magistrate are empowered to regulate the traffic and to preserve and control the public places. Section 31 (a) to (z) has specified different areas for this purpose. It is, in exercise of this power, the Commissioner/District Magistrate of Bengaluru issued an order in the year 1989 called "Licensing and Controlling of Places of Public Amusements (Bangalore City) Order, 1989" (hereinafter referred to as "the Order 1989"). The Commissioner then called upon the restaurant owners, who were displaying "Live Band Music" in their restaurants to obtain the licences under Order 1989 for running their restaurants and for displaying the Live Band Music.

9) The restaurants owners felt aggrieved and filed the writ petitions in the High Court of Karnataka. According to them, their restaurants wherein they were displaying "Live Band Music" for entertaining their customers, was not an activity covered under Order 1989. It was contended that these restaurants could not be treated as a place of "Public Amusement" as defined under Section 2(14) of the Act, but at best could be treated as a place of "Public Entertainment" as defined under Section 2(15) of the Act. In other words, the contention of the writ petitioners was that the applicability of the Order 1989 was confined only to the places of "Public Amusement" and since the restaurants were displaying Live Band Music, their place could not be termed as the place of public amusement as defined under Section 2(14) of the Act. It is for this reason, the provisions of the Order 1989 could not be extended to their restaurants.

10) It was contended that there lies a distinction between the activities falling in "Public Amusement" and those falling in "Public Entertainment" as is clear from the two expressions defined in Section 2 (14) and Section 2 (15) of the Act.

11) The Writ Court (Single Judge) finding substance in the writ petitioners' aforementioned contention allowed the writ petitions and quashed the order of the Commissioner. However, the Division Bench in an appeal filed by the State set aside the order of the Single Judge and while allowing the State's appeal dismissed the writ petitions. The writ petitioners felt aggrieved and filed appeals by way of special leave before this Court being Civil Appeal Nos. 1857-1858 of 2000.

12) By order dated 28.11.2002 (Annexure P-3), this Court allowed the appeals and restored the order of the Single Judge. It was held that the writ petitioners' premises, i.e., restaurants displaying

Live Band Music is not a place of "Public Amusement" but it is a place of "Public Entertainment". It was held that the Order 1989 was, therefore, not applicable to the writ petitioners' (appellants') restaurants for regulating the activities carried on therein as the same fell outside the purview of the Order 1989. The operative part of the order reads as under:

“In view of the aforesaid conclusion of ours, we are of the considered opinion that the appellants’ premises which is a “place of public entertainment” cannot be held to be also a “place of public amusement” merely because a live band is also provided in the place of entertainment where food and drinks are served and consequently the provisions of the Licensing Order will have no application to such premises. The impugned judgment of the Division Bench of the High Court is set aside and these appeals are accordingly allowed.”

13) It is with this factual background, the Police Commissioner, Bangalore city was required to issue the Order in the year 2005 called "The Licensing and Controlling of Places of Public Entertainment (Bangalore City) Order, 2005" (hereinafter referred

to as “the Order 2005”) under Section 31 of the Act. It is this order which gave rise to second round of litigation in the High Court and now in this appeal.

14) The Order 2005 with which we are concerned in this appeal was passed by the Commissioner of Police with a view to regulate the running and the functioning of the restaurants providing the facility of displaying “Live Band Music”, “cabaret dance” and “discotheque” in the restaurants. The details of the Order 2005 would be mentioned at a later stage while dealing with the issues.

15) The appellant-Association felt aggrieved by the Order 2005 filed writ petitions and challenged its legality and validity. The Single Judge was of the view that since the Commissioner did not comply with the procedure laid down in Section 31 of the Act before issuing the Order inasmuch as he did not invite any objections from the public at large, the Order 2005 is bad in law.

16) The Single Judge, accordingly, disposed of the writ petitions and directed the Commissioner of Police to treat the Order 2005 impugned in the writ petitions to be the “draft Order” and granted an opportunity to the public at large to file their objections as provided in the Act to the proposed draft Order 2005 and then to proceed in the case in accordance with law. The Single Judge further held that since Live Band Music was not being displayed for a long period in the restaurants, no prejudice would be caused to the restaurants’ owners, if they do not display the Live Band Music for a further period of two months. The Commissioner was, accordingly, directed to decide the objections, if any, filed by the parties concerned within two months and then to proceed in accordance with law.

17) Dissatisfied with the order of the Single Judge, the appellant-Association and many other restaurants owners filed intra Court appeal before

the Division Bench. The Division Bench dismissed the appeal. The appellant-Association felt aggrieved and carried the matter in appeal by special leave before this Court.

18) This Court by order 02.12.2005 allowed the appeal in part and permitted the appellant members to run their restaurants with display of Live Band Music till Rules are framed. This Court, however, imposed three conditions on the restaurants' owners. First, the proposed display of entertainment would not be used to promote the public gambling or the game house, it shall not be used for prostitution and no narcotic substance will be allowed to be consumed in the restaurants. Second, the restaurants owners will not organize or allow any performance or shows, which are immoral, obscene or indecent and will ensure that there is no obscenity or indecency in dress, movement or gesture and will ensure that the performers does

not expose their person; and third, the restaurant owners shall not permit any obscene or objectionable posters or pictures to be exhibited in their restaurants. The owners of the restaurants also gave the undertaking that they would not allow these three things to occur in their restaurants.

19) The Commissioner then issued the impugned Order 2005 on 09.12.2005 (Annexure-P-8) after ensuring the compliances as directed. This gave rise to filing of the writ petition by the appellant-Association questioning its constitutional validity in the High Court of Karnataka.

20) The challenge to the Order 2005 was based mainly on two grounds. First, the Licensing Order, 2005 violates Article 14 of the Constitution and being discriminatory in nature, is not legally sustainable. Second, it infringes the appellant's fundamental right guaranteed under Article 19(1)(g)

of the Constitution and hence *ultra vires* the provisions of the Constitution.

21) The Single Judge repelled both the aforementioned submissions of the appellant-Association and by order dated 09.02.2007 dismissed the appellant's writ petition. As a consequence thereof, the Order 2005 was upheld.

22) The appellant felt aggrieved and filed the writ appeal before the Division Bench of the High Court. The Division Bench concurred with the reasoning and conclusion of the Single Judge and, by impugned judgment, dismissed the appeal.

23) The writ petitioners felt aggrieved and filed the present appeal by way of special leave in this Court. This is how the issue has reached to this Court to examine the legality and correctness of the Order 2005 issued by the Commissioner under Section 31 of the Act.

24) Heard Mr. S.N. Bhat, learned counsel for the appellant and Mr. V.N. Raghupathy, learned counsel for the respondents.

25) Learned Counsel for the appellant (writ petitioner/restaurant owners' Association) while assailing the legality and correctness of the reasoning and the conclusion of the Single Judge (writ Court) and the Division Bench, reiterated the same submissions, which were unsuccessfully urged by the appellant before the two Courts below.

26) Elaborating his submissions, learned counsel contended that the activity of displaying Live Band Music in the restaurants with which we are concerned in this appeal is not an activity of a nature, which can be brought within the four corners of Section 31 of the Act so as to regulate its functioning by the impugned Order 2005.

27) In other words, the submission was that it is not necessary for the appellant to take licence for

displaying the Live Band Music in their restaurants and such activity can be performed in the restaurants even without the licence under the Order 2005, as was being done by them till 2005.

28) His submission was that insistence of the Commissioner of Police on the restaurant owners to obtain the licence under Clause 3 of the Order 2005 violates the principle of equality enshrined in Article 14 of the Constitution, as also it infringes their fundamental right guaranteed under Article 19 (1)(g) of the Constitution to practice any profession, or to carry on any occupation, trade or business.

29) Learned counsel urged that the conditions specified in the Order 2005 to obtain the licence are unworkable, unreasonable and harsh and thus are incapable of being implemented. The conditions, according to the learned counsel, also creates a discrimination between the two alike restaurants without any reasonable classification as it requires

one restaurant owner to obtain the licence and exclude other similar restaurant owners from obtaining the licence.

30) Learned counsel urged that since the restrictions imposed on the appellant while running the restaurants are found unworkable or/and unreasonable, it amounts to infringement of their fundamental right guaranteed under Article 19(1)(g) of the Constitution.

31) Learned counsel then elaborated the aforementioned submissions by referring to various clauses of the Order 2005 with a view to show their unreasonableness and harshness in implementation and contended that the Order 2005 deserves to be quashed as being unconstitutional.

32) Learned counsel for the appellant filed a compilation of the cases in support of his contentions. These decisions are **Bijoe Emmanuel & Ors. vs. State of Kerala & Ors.** (1986) 3 SCC

615, **Secretary, Ministry of Information & Broadcasting, Govt.of India & Ors. vs. Cricket Association of Bengal & Ors.** (1995) 2 SCC 161, **Tata Press Ltd. vs. Mahanagar Telephone Nigam Ltd.**, (1995) 5 SCC 139, **Mrs. Usha Uthup vs. State of West Bengal & Ors.**, AIR 1984 Cal.268, **Sakal Papers (Pvt.) Ltd. vs. U.O.I.**, AIR 1962 SC 305, **Indian Express Newspapers (Bombay) Pvt. Ltd. & Ors. vs. U.O.I. & Ors.** (1985) 1 SCC 641, **Express Newspaper(P) Ltd. & Anr. Vs. U.O.I. & Ors.** AIR 1958 SC 578, **Life Insurance Corpn. of India vs. Manubhai D. Shah**, (1992) 3 SCC 637, **R. Rajagopal @ R.R. Gopal & Anr. Vs. State of T.N. & Ors.**, (1994) 6 SCC 632, **K.A. Abbas vs. U.O.I. & Anr.** (1970) 2 SCC 780, **Mohd. Faruk vs. State of M.P. & Ors.** (1969) 1 SCC 853, **Dharam Dutt & Ors. vs. U.O.I. & Ors.** (2004) 1 SCC 712, **Cellular Operators Asson. Of India & Ors. vs. TRAI & Ors.** (2016) 7 SCC 703, **M/s Dwarka Prasad Laxmi**

Narain vs. State of U.P. & Ors., AIR 1954 SC 224,
**State of Maharashtra & Anr. vs. Indian Hotel &
Restaurants Asson. & Ors.** (2013) 8 SCC 519,
**People's Union for Civil Liberties & Anr. vs.
U.O.I. & Anr.** (2013) 10 SCC 1, **Raja Video Parlour
& Ors. vs. State of Punjab & Ors.** (1993) 3 SCC
708, **M/s Noorulla Ghazanfarulla vs. Municipal
Board of Aligarh & Ors.** (1982) 1 SCC 484, **Andhra
Industrial Works, A.P. vs. Chief Controller of
Imports & Ors.**, AIR 1974 SC 1539, **Dr. Ram
Manohar Lohia vs. State of Bihar & Anr.** AIR
1966 SC 740, **Delhi Cloth & General Mills Co. Ltd.
etc. vs. U.O.I. Etc.**, (1983) 4 SCC 166, **Illachi
Devi(D) by L.Rs. & Ors. vs. Jain Society,
Protection of Orphans India & Ors.**, (2003) 8 SCC
413, **M.J. Sivani & Ors. vs. State of Karnataka &
Ors.**, (1995) 6 SCC 289, **Indulal K. Yagnik v. State
& Ors.** AIR 1963 Guj. 259 and **Saia vs. People of
State of New York**, 334 US 558 (1948).

33) In reply, learned counsel for the respondent (State) supported the reasoning and conclusion arrived at in impugned judgment and contended that the appeal has no merit.

34) Before we proceed to examine the various submissions urged by the learned counsel for the parties, it is apposite to take note of the relevant provisions of the Act and the Order 2005, which have a bearing over the controversy.

35) Section 2 (14) of the Act defines the expression "Place of Public Amusement" whereas Section 2(15) defines the expression "Place of Public Entertainment". As mentioned above, Section 31 gives power to the Commissioner of the Police and the District Magistrate to make orders for regulation of traffic and for preservation of order in public places etc. Clause (w) of Section 31 deals with licensing or controlling places of public amusement or entertainment whereas clause (x) deals with

licensing or controlling with such exceptions as may be specified, the musical, dancing, mimetic or theatrical or other performances for public amusement including melas and tamashas.

36) Clause 2 of the Order 2005 defines certain expressions such as "Cabaret", "Discotheque", "Educational Institution", "Live Band", "Religious Institution". Clause 3 deals with obtaining of the licence. Clause 4 deals with the application for licence. Clause 5 gives power to the licensing authority to make inspection of the premises. Clause 7 deals with grant or refusal of licence. Clause 8 deals with the seating arrangements in the premises in question. Clause 9 deals with Notice Board. Clause 10 deals with renewal of licence. Clause 11 deals with termination of licence. Clause 12 deals with prohibition of change of the name. Clause 13 deals with power to stop music. Clause 14 deals with suspension of licence. Clause 15 deals

with procedure for cancellation of licence. Clause 16 deals with inspection of licenced premises. Clause 17 deals with notice to the licensing authority and clause 18 deals with licence fees.

37) Relevant Sections of the Act and the clauses of the Order 2005 need reproduction in verbatim infra.

Section 2(14) of the Act

“(14) "place of public amusement" means any place, where music, singing, dancing, or any diversion, or game, or the means of carrying on the same is provided and to which the public are admitted and includes a race course, circus, theatre, music hall, billiard room, bagatelle room, gymnasium, fencing school, swimming pool or dancing hall;

Section 2(15)

(15) "place of public entertainment" means any place to which the public are admitted and where any kind of food or drink is supplied for consumption in the premises by any person owning or having an interest in or managing such place and includes a refreshment room, eating house, coffee house, liquor house, boarding house, lodging house, hotel, tavern, or a shop where wine, beer, spirit, arrack, toddy, ganja, or other kind of liquor or intoxicant or any kind of food or drink is supplied to the public for consumption in or near such shop;”

Section 31

Section 31 - Power to make orders for regulation of traffic and for preservation of order in public places, etc. (1) The Commissioner and the District Magistrate, in areas under their respective charges or any part thereof, may make, alter or rescind orders not inconsistent with this Act, for,--

Clause (w)

(w) (i) licensing or controlling places of public amusement or entertainment;

(ii) prohibiting the keeping of places of public amusement or entertainment or assembly, in order to prevent obstruction, inconvenience, annoyance, risk, danger or damage to the residents or passengers in the vicinity;

(iii) regulating the means of entrance and exit at places of public amusement or entertainment or assembly and providing for the maintenance of public safety and the prevention of disturbance thereat;

Clause (x)

(x) (i) licensing or controlling with such exceptions as may be specified, the musical, dancing, mimetic, or theatrical or other performances for public amusement, including melas and tamashas;

(ii) regulating in the interest of public order, decency or morality or in the interest of general public, the employment of artists, and the conduct of the artists and the audience at such performances;

(iii) prior scrutiny of such performance by a Board appointed by the Government or by an Advisory Committee appointed by the Commissioner or the District Magistrate in this behalf;

(iv) regulating the hours during which and the places at which such performances may be given;”

Clause 2 of Order 2005

2. Definitions:

b) ‘Cabaret’ means a form of dance performed in a place of public entertainment by dancers or artists or any other person as a part of musical entertainment;

d) ‘Discotheque’ means a facility provided at a place of public entertainment to customers or patrons for singing or dancing of whatever form or both;

j) ‘Live band’ means music, live or recorded, provided at a place of public entertainment, whether or not accompanied by any form of dancing including cabaret.

Clause 3

3. Obligation to obtain a Licence:- No person shall open or maintain a place of public entertainment like live band, cabaret, discotheque without obtaining a licence under the provisions of this Order from the Licensing Authority:

Providing that no such licence shall be necessary for places of public entertainment like refreshment room, eating house, coffee house, boarding house, lodging house, hotel, tavern or shop where wine, beer, spirit, arrack or any other kind of liquor, intoxicant or any kind of food or drink is supplied to the public for consumption on the basis of a valid licence obtained under the relevant provisions applicable for establishing and maintaining such places of public entertainment and also supplying the abovementioned things or services and where live band, cabaret or discotheque or any

other activity of a similar nature is not performed:

Provided further that no such licence shall also be necessary to conduct Yakshagana, bayalata (field drama), Bharathanatyam, Folk Art, music recital, vocal or instrumental like Veena, Mrudana etc.

Clause 4

4. Application for Licence: (1) Every person applying for a licence to maintain a place of public entertainment shall make an application in form No.1 along with the documents specified therein and his three recent photographs.

(2) An application can be obtained from the Licensing Authority on payment of the specified fee under clause 18 of this Order.

(3) While submitting the application, the applicant shall appear in person before the Designated Authority and satisfy him that all the required information and documents have been furnished along with the application.

Clause 5

5. Inspection of the premises- The Licensing Authority or any officer not below the rank of Inspector of Police, as may be authorized by the Licensing Authority may for the purpose of granting licence, if necessary, hold an inspection of the site or premises. The Licensing Authority or the Officer so authorized may, if need be, seek assistance of any other authority or authorities during such inspection.

Clause 7

7. Grant or refusal of Licence: (1) The Licensing Authority shall while deciding to grant or refuse a licence under this Order have regard to the following aspects, namely:

- (a) the interest of public in general;**
- (b) the status and antecedents of the applicant;**
- (c) availability of parking place commensurate with the seating capacity;**
- (d) the possible adverse impact on law and order;**
- (e) vicinity of the place to educational or religious institutions. For this purpose vicinity shall mean within a distance of 200(two hundred) metres;**
- (f) that the entertainment does not in any way incite religious feelings;**
- (g) that the materials used for the structure do not pose any kind of fire hazard;**
- (h) that the proposed entertainment does not promote public gambling or the premises shall not be used a gaming house or does not encourage prostitution or allow the use of narcotic substances or permit any other illegal activity;**
- (i) that the licensee shall not organize or allow performance of shows which are immoral, obscene or indecent and ensure that there is no obscenity or indecency in dress, movement or gesture or that the performers indecently expose their person;**
- (j) the licensee shall not permit any obscene or objectionable posters or pictures to be exhibited;**

(k) that the proposed premises do not cause obstruction, inconvenience, annoyance, risk, danger or damage to the residents or to passerby of such premises;

(l) that all adequate precautions have been taken in the premises in respect of which the licence is to be granted to provide for the safety, convenience and comfort of the persons attending the programmes therein.

(2) The Licensing Authority on being satisfied and subject to the provisions of this Order, may grant a licence to the applicant in Form-II on such terms and conditions, and for such period subject to such restrictions as the Licensing Authority may determine. No licence shall be granted for a period exceeding one year. A licence can be renewed for a period not exceeding one year at a time:

Provided that where the Licensing Authority refused to grant licence, it shall do so for reasons to be recorded in writing and that order shall be communicated to the applicant:

Provided further that the licensee may conduct any show or public entertainment only between 10.00 hrs. and 23.30 hrs. However, the licensing authority at his discretion may permit conducting of shows or public entertainment beyond 23.30 hrs. on special occasions not exceeding three such occasions in a year for each licence.

Provided further that additional conditions may be imposed by the Licensing Authority during the period of Licence for reasons to be recorded in writing and communicate the same to the licensee.

Clause 8

8. Seating arrangements:-

(1) The licensee shall not accommodate more than twenty persons per nine square meters in the place of public entertainment:

Provided that the entrance, passage, corridor, gangway and stage shall be deducted for the purpose of calculating the seating accommodation.

(2) There shall be an open space of not less than five feet wide on any two sides of the premises where live band or discotheque is performed.

(3) There shall be at least one emergency exit in addition to the normal doorway fitted with doors which open outwards.

(4) There shall be openings sufficiently wide enough to ensure good ventilation or there shall be provision for sufficient good air condition.

(5) One W.C. and one urinal separate for men and women each for every fifty persons or less shall be provided.

(6) Any live band performance within the licensed premises for conducting live band shall be conducted on a stage which shall be properly demarcated from the seating area. There shall be no inter-mingling of performers with customers/guests on or off the stage. There shall be a distance of at least five feet between the stage and first row of seating area.

Clause 9

9. Notice Board:- (1) Every licensee shall affix or cause to be affixed at some conspicuous place at the place of Public

Entertainment a board of suitable size on which shall be written in Kannada and English, the name and address of the licensee and the period of licence.

(2) He shall also specify the seating capacity/maximum capacity of the premises conducting live band, Cabaret, Discotheque, as the case may be.

(3) He shall also exhibit at a prominent place in the premises a photo copy of the licence.

Clause 10

10. Renewal of Licence:- (1) Every application for renewal of the licence granted under this Order shall be made at least thirty days before the day on which such licence is to expire. The application shall be accompanied by the licence to be renewed and the amount of fee as specified in clause 18.

(2) Where an application is made in accordance with sub-clause(1), the earlier licence shall be deemed to be in force till the renewal or refusal of such licence is communicated to the applicant.

(3) Application for renewal of a licence, not made in accordance with the provisions of this clause, shall be liable to be rejected by the licensing authority.

Clause 11

11. Licence shall terminate with the transfer of business:- A licence granted under this Order for maintaining a place of public entertainment shall not be transferable or assignable to any other person. Where such person transfers or assigns his business to any other person or enters into an agreement with another person, involving his giving up of the conduct or control over the business,

the licence granted to him shall stand terminated on and from the date of such transaction:

Provided that in the case of death of the licensee, his heir or legal representatives may make an application within one month from the date of death to the Licensing Authority seeking continuance of the licence for the un-expired term of the licence. No fee shall be charged for such continuance of licence.

Clause 12

12. Prohibition of change of name:- A licensee shall not make any change in the name of the establishment or use his premises or allow any other person to use the premises for the purpose of any other type of entertainment which he is not authorized under the licence.

Clause 13

13. Power to stop music: Without prejudice to the conditions specified in the licence, the Licensing Authority may, by a general or special order made in this behalf, direct that no music shall be played or allowed to be played during such time as he may direct.

Clause 14

14. Suspension of licence: If any person maintaining a place of public entertainment permits prostitution or permits persons to meet or remain in such place for the purpose of planning or carrying out an illegal activity or violates any of the conditions of this order, the licensing authority shall have the discretion to suspend the licence for such period as he may think fit and direct such person to close the place for such period as he may specify. The person to whom such direction is issued by the licensing authority

shall comply with such direction. However, the period of suspension shall not exceed 30 days at a time.

Clause 15

15. Procedure for cancellation of Licence: No licence granted under this Order shall be cancelled until the holder of the licence has been given a reasonable opportunity of showing cause why his licence should not be cancelled.

Clause 16

16. Inspection of Licensed Premises: Every person maintaining a place of public entertainment shall, at all times allow free access to such place to the Licensing Authority or any police officer not below the rank of a Police Inspector having jurisdiction over the area or authorized by the Licensing Authority to hold inspection as deemed necessary to ensure and satisfy that the Licensee has complied with the provisions of this Order.

Clause 17

17. Notice to the Licensing Authority: Every person shall, as soon as he voluntarily closes the place of public entertainment in respect of which a licence has been granted under this Order, shall intimate such closure to the Licensing Authority.

Clause 18

18. Fee:- Licensing Fee for every licence per annum, shall be as below:

- | | | | |
|------|---------------|---|-------------|
| (i) | Fresh Licence | - | Rs.20,000/- |
| (ii) | Renewal | - | Rs.5,000/- |

(iii) Application form fee Rs.500/-”

38) There are two Latin legal maxims, which need to be kept in mind while deciding the questions arising in this appeal. One is “**Salus Populi Supremo Lex**” which means the safety of the people is the supreme law and the other is “**Salus reipublicae suprema lex**” which means safety of the State is the supreme law.

39) In our considered view, it is the prime duty, rather statutory duty, of the Police personal/administration of every State to maintain and give precedence to the safety and the morality of the people and the State. Indeed, both are important and lie at the heart of the doctrine that the welfare of an individual must yield to that of the community. The Act and the Order 2005 are enacted keeping in view the safety and the morality of the people at large.

40) In our view, whenever the impugned action is challenged on the touchstone of Articles 14 and 19(1)(g) of the Constitution, we have to keep in mind the well-settled principle of law laid down by this Court wherein this Court has examined lucidly and succinctly the scope and ambit of Articles 14 and 19(1)(g) .

41) So far as Article 14 is concerned, it is useful to refer to the law laid down in two decisions of this Court reported in **Budhan Choudhry vs. State of Bihar**, AIR 1955 SC 191 and **Ram Krishna Dalmia & Ors. vs. S.R. Tendulkar & Ors.** AIR 1958 SC 538.

42) In the case of **Budhan Choudhry** (supra), the Constitution Bench of seven Judges of this Court explained the true meaning and scope of Article 14 as follows:

“5. ... It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two

conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases; namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure.”

43) In **Ram Krishna Dalmia** (supra), this Court reiterated the principles which would help in testing the legislation on the touchstone of Article 14 in the following words:

“(a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;

(b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

(c) that it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its

discriminations are based on adequate grounds;

(d) that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;

(e) that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and

(f) that while good faith and knowledge of the existing conditions on the part of the legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation.”

(emphasis supplied)

44) These principles were reiterated by this Court in **Shashikant Laxman Kale & Anr. vs. Union of India & Anr.** (1990) 4 SCC 366 and in a recent decision of this Court in **State of Maharashtra & Anr. vs. Indian Hotel & Restaurants Association & Ors.** (2013) 8 SCC 519.

45) Similarly, so far as Article 19(1)(g) of the Constitution is concerned, this Article accords fundamental rights to carry on any profession, occupation, trade or business. However, the right guaranteed under clause (g) is made subject to imposition of appropriate reasonable restrictions by the State in the interest of general public under clause (6).

46) As and when the question arises as to whether a particular restriction imposed by law under clause (6) is reasonable or not, such question is left for the Court to decide. The test of reasonableness is required to be viewed in the context of the issues, which faced the impugned legislature. In construction of such laws and while judging their validity, the Court has to approach the issue from the point of furthering the social interest, moral and material progress of the community as a whole. Likewise, while examining such question, the Court

cannot proceed on a general notion of what is reasonable in its abstract form nor the Court can proceed to decide such question from the point of view of the person on whom such restriction is imposed. What is, therefore, required to be decided in such case is whether the restrictions imposed are reasonable in the interest of general public or not.

47) This Court has laid down the test of reasonableness in the case of **State of Madras vs. VG Row**, AIR 1952 SC 196 and very succinctly said that it is important, in this context, to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned and no abstract standard or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby,

the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial mind.

48) This Court has further ruled that the expression "in the interest of general public" occurring in clause (6) is an expression of wide import which comprehends in it public order, public health, public security, morals, economic welfare of the community and lastly objects mentioned in Part IV of the Constitution. **(See Municipal Corporation of the City of Ahmedabad & Ors. vs. Jan Mohammed Usmanbhai & Anr., (1986) 3 SCC 20 and Deepak Theatre, Dhuri vs. State of Punjab & Ors., 1992 Supp(1) SCC 684).**

49) This Court has also ruled, as mentioned above, that the State has a right to regulate running of any business by putting reasonable restrictions under clause (6) in the interest of general public. It was held in the case of **Minerva Talkies, Bangalore &**

Ors. vs. State of Karnataka & Ors. 1988 Supp. SCC 176 that the right to carry on the business of exhibiting cinematograph films, which is governed by the provisions of Karnataka Cinemas Regulation Act and the Rules framed thereunder, is subjected to the rigor of reasonable restrictions and the State Government has a power to limit/restrict the exhibiting number of shows in the Talkies in a day. It was held that such provisions are necessary to ensure public safety, health and other allied matters. It was held that imposing such restriction is essentially regulatory in nature and serves the purpose of the Act.

50) After taking note of the general principle of law governing the field, which we have to keep in mind, we have to examine the question as to whether the Order 2005, impugned in the appeal, has created any discrimination or whether the Order 2005 is in any way unreasonable or arbitrary and lastly,

whether it violates the appellant's fundamental right guaranteed under Article 19 (1)(g).

51) Having examined the questions in the light of aforementioned general principles of law, we are of the considered opinion that the Order 2005 does not suffer from any legal infirmity and is therefore constitutional. This we say for more than one reason as detailed *infra*.

52) First, Section 31 is a valid piece of legislation. Its constitutionality is not questioned. Second, clauses (w) and (x) of Section 31 empowers the Commissioner of Police to issue Order in respect of the matters specified therein. Third, it is in exercise of this statutory power, the Commissioner of Police, Bangalore has issued the Order 2005 to regulate, control and supervise the activities specified in clause(w) and (x). Fourth, in the light of these three reasons, no fault can be found so far as the source

of power of the Commissioner of Police to issue the Order 2005 is concerned.

53) Fifth, the Order 2005 has been issued to deal with three activities, which are covered by the expression "Public Entertainment" as defined in Section 2(15) of the Act. In other words, the appellant's business activity, viz., running of the restaurants and display of Live Band and two others fall under the expression "Public Entertainment".

54) Sixth, in the light of aforementioned reasonings, Cabaret, Discotheque or Live Band Music are rightly subjected to the rigor of Order 2005. Indeed, the Order 2005 has been issued only with a view to control, regulate and supervise the three performances in the restaurants. Since these performances are displayed in a restaurant where public has an access and, therefore, in the larger public interest, these performances have to be controlled, regulated and supervised by imposing

reasonable restrictions in law under clause (6) of Article 19.

55) Seventh, making it obligatory to obtain licence under Clause 3 to display Cabaret, Discotheque or Live Band is a reasonable restriction on the appellant's fundamental right to carry on the business of running the restaurants.

56) Indeed, controlling of any business by asking its owner to obtain licence to do such business is held to be a reasonable restriction on citizen's fundamental right under article 19(1)(g) read with clause (6) and we do not find any illegality in such regulation.

57) Eighth, conditions specified in Sub-clauses (a) to (l) of Clause 7, Clause 8 and Clause 9 of the Order 2005 are well conceived conditions in public interest. These conditions ensure the safety and the welfare of the general Public who regularly visits

such restaurants to take food and witness the live performances of the artists in the restaurants.

58) Indeed, if these safety measures are not adhered to by the owners of the restaurants while running their restaurants, the general public would always have a risk of subjecting themselves to the happening of any untoward incident endangering their life and safety.

59) At this stage, it is also necessary to take note of various compliances, which are required to be made by the Licensee to run their restaurants.

60) Sub-clause (a) of Clause 7 deals with the interest of public in general. Clause (b) deals with the status and antecedents of the applicant who applies for running the restaurant. Clause (c) deals with availability of parking place commensurate with the seating capacity. Clause (d) deals with possible adverse impact on law and order. Clause (e) deals with vicinity of the place (restaurants) to

educational or religious institutions, i.e., 200 meters. Clause (f) provides that entertainment displayed should not in any way incite religious feelings of any particular community. Clause (g) provides that the material used for the structure in running the restaurants should not pose any kind of fire hazard. Clause (h) provides that the proposed entertainment should not promote public gambling nor the premises be used as a gaming house nor any attempt be made to encourage a prostitution nor the premises be allowed to be used for sale or consumption of narcotic substance nor the licensee is permitted to carry on any kind of illegal activities in the premises. Clause (i) provides that licensee shall not organize or allow performance of shows which are immoral, obscene or indecent and will ensure that there is no obscenity or indecency in dress, movement or gesture or/and the performers does not indulge in any kind of indecency and in

exposing their person. Clause (j) provides that licensee shall not permit any obscene or objectionable posters or pictures to be exhibited in the premises. Clause (k) provides that the proposed premises do not cause obstruction, inconvenience, annoyance, risk, danger or damage to the residents or to passers by of such premises and lastly clause (l) provides that it must be ensured that all the aforementioned precautions have been taken in the premises in respect of which licence is to be granted to provide for the safety, to avoid any inconvenience likely to cause to public and to ensure full comfort to the persons attending the programs displayed in the restaurants.

61) So far as Clause 8 is concerned, it is important as it deals with seating arrangements in the restaurants. It sets out six parameters in sub-clauses (1) to (6) to control the sitting arrangements in the restaurants. It also provides

that every restaurant shall have at least one emergency exit in addition to normal doorway fitted with doors which open outward in the event of occurrence of any fire hazard. Similarly, Clause 9 provides that how the Notice Board would be displayed and what will be its contents.

62) In our considered opinion, the conditions specified in Clauses 7, 8 & 9 directly deal with the public safety, comforts, convenience, morality and law and order and we have not been able to find any kind of unreasonableness or arbitrariness in any of the abovementioned clauses so as to hold that they are unworkable for running the restaurant and to display the three performances.

63) In our view, those who find themselves unable to ensure compliances of these conditions or feel that it is not possible for them to comply, may not display the performances in their restaurants.

64) As held above, the public interest, the welfare and the safety of general public always override the right of an individual. There is no prohibition for any individual to carry on such business. However, if he wishes to carry on such business, he has to follow the norms and the statutory regulation framed for carrying on the business. He cannot be heard to say that he will carry on the business but without ensuring the norms and the regulations framed for the purpose.

65) In our opinion, here comes the application of the two maxims quoted supra while determining the rights of an individual *qua* public and the State.

66) Indeed, we can take judicial notice of an incident occurred in recent past in a restaurant in Mumbai where life of several innocent people sitting in the restaurants were lost due to lapses in ensuring compliance of safety measures. Yet another incident of the similar nature occurred few

years before in Upahar Theater in Delhi where several innocent people lost their life due to non-observance of safety measures.

67) When such incidents occur, they never obliterate from the memories of the citizen and leave a message to all the stakeholders that steps for strict compliance must be taken to avoid any such recurrence in future at any place. We hope that all the stakeholders will keep our observations in mind.

68) Ninth, all the measures set out in Clauses 7, 8 and 9 need to be complied with in letter and spirit by every restaurant owner before obtaining the licence and that they must continue to observe its compliances during currency of the licence on regular basis for the benefit, safety and the welfare of the customers and the residents of the area.

69) Tenth, the Order 2005 has rightly provided a check on the powers of the licensing authority in granting or refusing the licence in as much as the

licensing authority is now required to give reasons for rejecting the licence.

70) Such rejection can always be made subject matter of challenge in the Court of law by an aggrieved. A provision of this nature eliminates any kind of arbitrariness on the part of licensing authority while considering the grant or rejection of the licence under Order 2005.

71) This takes us to examine another question as to whether any case of arbitrariness or/and discrimination in issuing Order 2005 as urged by the appellant is made out.

72) We are, however, unable to find any case of arbitrariness or discrimination having been made out by the appellant so as to attract the rigor of Article 14 of the Constitution.

73) Indeed, the Order 2005 does not create any discrimination between the two alike. The restaurants which are engaged in displaying the

three performances specified in Clause 2 (b), (d) and (j) of the Order 2005 are under legal obligation to take licence under Clause 3.

74) Learned counsel for the appellant, however, pointed out the proviso to Clause 3 that it is this proviso which creates a discrimination inasmuch as there does not appear to be any justifiable reason to exclude those restaurants from obtaining the licence which are conducting Yakshagana, Bayalata (field drama) or Bharat Natyam, folk Art, Music recital, vocal or instrumental like Veena or Mrudana etc.

75) We do not find any merit in this submission though look attractive at its first blush. First, it is for the Police Commissioner to decide in its discretion having regard to the totality of entire fact situation as to what should be brought within the ambit of the Order 2005 and what should be left out from its clutches. Second, there appears reasonable

distinction between the two performances because as rightly urged by the respondent, the performances specified in the proviso, are not usually performed in restaurants but are performed in theaters or/and auditoriums as one time performance by the artists whereas the three performing items namely - Cabaret, Discotheque and Live Band Music are the activities which are regularly performed and attract more crowd and lastly the items specified in proviso even if performed in restaurants does not involve any kind of indecency or obscenity whereas other three performances may unless controlled. In our view, proviso seems more clarificatory in nature.

76) In any case, in our view, if the Commissioner finds that the performances specified in proviso may also be brought within the ambit of the Order 2005 then he is always at liberty to include any such performance in Clause 3.

77) We have perused the decisions cited by the learned counsel for the appellant mentioned above. In our opinion, there can be no dispute with the law laid down in these cases. They are, however, distinguishable from the facts contained therein as compared to the facts of the case at hand.

78) In the light of the foregoing discussion, we are of the considered view that the Order 2005 does not suffer from any arbitrariness or unreasonableness and nor it infringes the fundamental right of the appellant guaranteed under Article 19 (1)(g) of the Constitution of India. In other words, in our considered view, both the Courts below were justified in upholding the Order 2005 as being constitutional and legal.

79) Now we uphold the Order 2005, we consider it apposite to direct the respondent-Police Commissioner, Bengaluru to verify and ensure strict compliance of the licence conditions, including all

the conditions of the Order 2005 in relation to all the Licensees in whose favour, the licences have been issued so far.

80) The Commissioner will further verify and ensure that those restaurant owners who have not obtained licences so far and yet running their restaurant without holding the licence, such restaurant owners be granted some reasonable time to apply for obtaining the licence after ensuring compliances as provided in the Order 2005, which alone will enable them to run their restaurants in conformity with the requirements of the Order 2005.

81) Failure to obtain the licence after granting a reasonable time to the restaurant owners would result in closure of their restaurants after giving them notice of the closure.

82) Before parting, we consider it opposite to take note of one fact that though clause 7 (K) of the Order 2005 rightly provides in general to ensure

that the proposed premises do not cause any obstruction, inconvenience, annoyance, risk, danger or damage to the residents or to passerby of such premises, but what we find is that there is no specific clause/condition dealing with control of noise pollution which is likely to create or rather bound to create due to regular display and performance of the three activities in the restaurants thereby causing disturbance, annoyance and inconvenience to the near residents of the nearby area. The Commissioner shall ensure that no noise pollution is caused to residents of the nearby area due to any of the three performances in any restaurant and that remedial steps are taken in that behalf.

83) Similarly, with a view to avert any untoward incident due to breaking of fire may be for any reasons in the licensed premises, appropriate specific safety measures must be carried out under

the guidance of team of experts. These steps are in public interest and it should be given precedence by the Commissioner of Police not only at the time of granting of license but also by doing regular inspection of the licensed premises without any lapse on his part.

84) We hope the Commissioner will take into consideration these observations.

85) In view of foregoing discussion and subject to aforementioned directions, the appeal fails and is accordingly dismissed.

.....J.
[R.K. AGRAWAL]

.....J.
[ABHAY MANOHAR SAPRE]

New Delhi;
January 25, 2018