

05. 03.12.2015

Heard Mr.R.K.Rath learned Senior Advocate on behalf of the petitioner-Sri Prasanna Kumar Panda Mr.J.Pattnayak learned Addl. Government Advocate on behalf of the State (Excise Department) and Mr.B.Bhuyan learned Addl. Government Advocate on behalf of the Commissionerate of Police.

2. On perusal of the records it appears that the present writ application is only confined to Petitioner No.1-Sri Prasanna Kumar Panda who has been granted I.M.F.L. ON Shop by the State Excise authority under Annexure-1 to operate the I.M.F.L. ON Shop license at Hotel Swagat Bar & Restaurant at Laxmisagar Bhubaneswar and the said license has been renewed from time to time and remains in operation. The petitioner approached the Commissionerate of Police Bhubaneswar-Cuttack for being granted with license for cultural and musical programme and by virtue of the powers vested in them under Section 29 of the Orissa Urban Police Act 2003 read with Section 4 of Orissa Fire Works & Loud Speaker (Regulation) Act 1958 permission license was granted to the petitioner to organize musical programme and use of loud speaker on the terms and conditions stated therein and the said license remain valid up to 31.12.2015.

3. It is asserted in the present writ application that while the petitioner was operating his excise license of ON Shop bar and had engaged persons to operate the musical programmes a letter dated 5.11.2015 was issued by the Sub-Inspector of Excise under Annexure-3 to the following effect:

OFFICE OF THE SUB INSPECT OF EXCISE BBSR-1 CHARGE.

To

All Restaurant & Hotel ON Licensees of BBSR-1 Charge.

Sub: Instruction regarding non-engagement of Womenperson below 18 years of age andor any illegal activities in the shop premises.

It is alleged in some of the Social Medias that some of the Rest. ON and Hotel ON shops of BBSR-1 and II charge area are conducting dance and music by engaging women in the shop premises to attract customers. It is a gross violation of Sec 25 of B&O Excise Act 1965. Apart from this it is also alleged that liquor is served outside the approved shop premises.

Hence you are again instructed not to allow such illegal activities or serious irregularities in the shop premises failing which appropriate action shall be taken as per law.

SUB INSPECT OF EXCISE  
BBSR-1 Charge.

The said order is the subject matter of challenge in the present writ application since it is stated that on and from the date of passing of such order the excise authority have compelled the ON Shop licensees who are holding musical programmes under licenses granted to them by the Commissionerate of Police to stop the musical programme immediately.

4. Mr.Rath learned Senior Advocate for the petitioner submits that the issues involved in this writ application has been settled by the Honble Supreme Court in the cases of Anuj Garg and others Vs. Hotel Association of India and others (2008) 3 SCC 1 as well as the State of Maharashtra and another Vs. Indian Hotel and Restaurants Association and others (2013) 8 SCC 519. He also submits that after the judgment of the Honble Supreme Court in the case of State of Maharashtra and another (supra) came to be passed the State of Maharashtra passed an ordinance prohibiting the performance of dance in eating house permit room or bear bar and other consequential provision by way of amendment by Maharashtra Police (Second amendment) Act 2014 with retrospective effect from 14.8.2005. Honble Supreme Court in the case of Indian Hotel & Restaurant Association & Anr. Vs. State of Maharashtra & Anr. passed in Writ Petition(s) (Civil) No(s).7932014 after discussing various judgments of the subject came to conclude as follows:

In view of the aforesaid and regard being had to the pronouncement in Indian Hotel Case (supra) we think it appropriate to stay the operation of the provisions enshrined under Section 33A(1) of the Act. However we add a rider that no performance of dance shall remotely be expressive of any kind of obscenity in any manner. We may hasten to clarify that in the earlier Judgment it has been clearly stated that sufficient power is vested with the Licensing Authority to safeguard any violation of the dignity of women through obscene dances. Regard being had to the same the Licensing Authority can take steps so that the individual dignity of a woman is not affected and there remains no room for any kind of obscenity.

As we are staying the provision if the members of the petitioner apply for licence the same shall be considered in accordance with law without taking note of the restriction as Section 33A has been stayed by us.

5. Mr. Pattnayak learned Addl. Government Advocate on behalf of the Excise Authority submits that the grant of permission of license by the Police Commissionerate Bhubaneswar-Cuttack under Orissa Urban Police Act 2003 also contained the following term:

13. That the applicant shall instructed not to employ womenundearage persons during the musical programme as per provision of Section 25(2) of Bihar and Odisha Excise Act 1915 in contravene you will liable as per penal prosecution us 54(a) of Bihar & Odisha Excise Act-1915.

He further submits that no direction was issued in the letter under Annexure-3 to the licensees to stop operation of the Shop andor the musical performances therein but was required compliance of such terms.

6. Earlier the Sub-Inspector of Excise-in-charge Sri D.K.Behera had appeared before this Court along with the Superintendent of Excise and submitted that the impugned order under Annexure-3 has been issued by him under oral instruction received from the Range Inspector Sri

Debi Prasad Das.

Today the Range Inspector Sri Debi Prasad Das appears in person and submits that although he possesses no records on the basis of which such directions were issued he claims that he has seen certain programmes on the news channel of Odisha TV pertaining to the musical concerts being held in the licensed ON Shops. He also states that what he saw on television there was neither vulgar nor indecent and yet for the purpose of ensuring compliance of Section 25(2) of Bihar & Orissa Act 1915 the said impugned order under Annexure-3 came to be passed.

7. For appreciation of the fact Section 25(2) of the Act is quoted as hereunder:

25. Employment of children or women by licensed vendors

(2) No person who is licensed to sell foreign liquor for consumption on his premises shall without the previous written permission of the Board

During the hours in which such premises are kept open for business employ or permit to be employed either with or without remuneration any woman

In any part of such premises in which such liquor is consumed by the public.

Admittedly in the present case the petitioner has not sought for permission nor obtained any approval of the Board for employing woman in the premises where the ON Shop license is being operated.

8. Mr. Bhuyan learned Addl. Government Advocate on behalf of the police authorities submits that the police have on certain occasion received allegation from the public regarding the alleged illegal activities and obscene exposure of body by the dancing girls inside the bars during late hours of night in the musical orchestra. The urban Police officers of the district have been conducting checking of the bar in their respective jurisdiction under the direction of the Commissionerate of Police Bhubaneswar-Cuttack to maintain law and order in the orchestra and to prevent crime against women.

9. The Deputy Commissioner of Police who is present in Court today submits that on preliminary enquiry carried out by the Urban police into the public allegations the police could not find any evidence of any obscenity or vulgarity at such locations where allegations have been made and the only violation they found was of the volume of music being played in violation of the license condition issued under the Orissa Fire Works & Loud Speaker (Regulation) Act 1958 and wherever such violation have occurred directions have been issued to ensure that the sound limits are kept within the permissible limits as prescribed thereunder.

10. In consideration of the submissions and the averments made we find that the Honble Supreme Court in the case of State of Moharashtra and another (supra) observed as follows:

140. The suggestions made for the amendment of the Regulations were as follows:

140.1. Bar girls dancing in dance bars should not wear clothes which expose the body and also there should be a restriction on such dancers wearing tight and provocative clothes.

140.2. There should be a railing of 3 ft height adjacent to the dance stage. There should be distance of 5 ft between the railing and seats for the customers. In respect of dance bars which have secured licences earlier provisions mentioned above be made binding. It should be made binding on dance bars seeking new licences to have railing of 3 ft height adjacent to the stage and leaving a distance of 5 ft between the railing and sitting arrangement for customers.

140.3. Area of dance floor should be minimum 10 ft x 12 ft i.e. 120 sq ft and the area to be provided for such dancer should be minimum of 15 sq ft so that more than 8 dancers cannot dance simultaneously on the stage having an area of 120 sq ft.

140.4. If the dancers are to be awarded there should be a ban on going near them or on showering money on them. Instead it should be made binding to collect the said money in the name of the manager of the dancer concerned or to hand over to the manager.

140.5. Apart from the above a register should be maintained in the dance bar to take entries of names of the girls dancing in the bar everyday. Similarly holders of the establishment should gather information such as name address photograph and citizenship and other necessary information of the dance girls. Holder of the establishment should be made responsible to verify the information furnished by the dance girls. Also above conditions should be incorporated in the licences being granted.

141. Despite the directions made by the State Government the authorities have not taken steps to implement the recommendations which have been submitted by AHAR. On the contrary the impugned legislation was enacted in 2005. In our opinion it would be more appropriate to bring about measures which should ensure the safety and improve the working conditions of the persons working as bar girls. In similar circumstances this Court in Anuj Garg had made certain observations indicating that instead of putting curbs on womens freedom empowerment would be more tenable and socially wise approach. This empowerment should reflect in the law-enforcement strategies of the State as well as law modeling done in this behalf. In our opinion in the present case the restrictions in the nature of prohibition cannot be said to be reasonable inasmuch as there could be several lesser alternatives available which would have been adequate to ensure safety of women than to completely prohibit dance. In fact a large number of imaginative alternative steps could be taken instead of completely prohibiting dancing if the real concern of the State is the safety of women.

The said observations of the Honble Supreme Court have been reiterated and in the interim orders passed in Writ Petition(s) (Civil) No(s) 7932014 Honble Supreme Court have categorically indicated that women have a right to work but their working condition must be regulated for obtaining the object set up by the Honble Supreme Court in Para-140 and 141 in the case of State of Maharashtra (supra).

11. In view of the aforesaid facts and law as established by the Honble Supreme Court

we direct the followings:

- i) The Commissionerate of Police must ensure that the terms and conditions of the license granted to bar owners for carrying out the musical programmes must contain the terms as determined by the Honble Supreme Court in both the judgments under reference.
- ii) The musical systems installed in such locations must have sound limiters to ensure the maximum volume as prescribed under the Noise Pollution (Regulation & Control) Rules 2000 cannot be violated.
- iii) The licensees must be called upon to locate a Closed Circuit Television Cameras at appropriate places with appropriate mechanism to ensure that the said facilities cannot be tampered with and such recorded-evidence can be verified by the police as well as the excise authority from time to time as they may prescribe.
- iv) The petitioner shall make an application along with the proof of identity of ladies who they seek to engage in the musical orchestra or through their agents in terms of Section 25(2) of the Bihar & Orissa Excise Act 1915 to the Board (Excise authority) containing the names and details of the performers of such musical programme within a period of one week from today. The Board (excise authority) shall do well to verify the said application and thereafter grant necessary permission to the individuals (women) who are engaged in such musical programme within a further period of one week from the date of receipt of such application.
- v) In the future if any licensee requires a license under Section 29 of the Orissa Urban Police Act 2003 such application shall be accompanied with the approval of the Board (excise authority) under Section 25(2) of the Bihar and Orissa Excise Act 1915 for processing the licenses.

12. In view of the above directions the writ application is accordingly disposed of.

13. Two free copies of the order be handed over to the learned counsel for the State. Urgent certified copy of this order be granted on proper application.

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I.Mahanty J.

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Dr.D.P.Choudhury J.

Misc. Case No.19147 of 2015

06. 03.12.2015 In view of the order passed in W.P.(C) No.20571 of 2015 the present Misc. Case is also disposed of.

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I.Mahanty J.

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Dr.D.P.Choudhury J.

Ranjan