

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 19TH DAY OF APRIL, 2007

PRESENT

THE HON'BLE MR.JUSTICE V.GOPALA GOWDA

AND

THE HON'BLE MR.JUSTICE H.HILLAPPA

W.A.NO.556/2007(GM-POLICE)

BETWEEN:

KARNATAKA LIVE BAND
RESTAURANTS ASSOCIATION
NOW AT NO.117
BALAJI PALZA LALBAGH ROAD
BANGALORE
REF. BY ITS SECRETARY
SRI K N SUBRAMANYAM NAIDU

APPELLANT

(By Sri: ASHOKHARANAHALI ASSOCIATES, ADV.)

AND:

- 1 STATE OF KARNATAKA
DEPT. OF HOME
VIDHANA SOUDHA
BANGALORE 1
REP. BY ITS SECRETARY
- 2 THE COMMISSIONER OF POLICE
BANGALORE CITY



INFANTRY ROAD
BANGALORE 1

3 THE DEPUTY COMMISSIONER
OF POLICE (ADMN) AND DESIGNATED
AUTHORITY
BANGALORE CENTRAL
BANGALORE 1

... RESPONDENTS

(By Sri: P.G.C.CHEGGAPPA, ADDL GOVT ADVOCATE)

THIS WRIT APPEAL IS FILED U/S 4 OF THE
KARNATAKA HIGH COURT ACT PRAYING TO SET
ASIDE THE ORDER PASSED IN THE WRIT PETITION
NO.27523/2005 DATED 09/02/2007.

This W.A coming on for PRELIMINARY HEARING
before the court this day, GOPALA GOWDA J, delivered
the following:-

JUDGMENT

The appellant herein is the Karnataka Live Band
Restaurants Association (hereinafter called as
Association in short). The common order passed by the
learned Single Judge in W.P.27523/2005 C/w
W.P.453/2006(GM-Police), the Association is aggrieved
of the same it has filed this appeal and prayed to set
aside the same and grant the reliefs as prayed in the
writ petitions urging various grounds.



2. The relevant facts and legal contentions urged in this Appeal we stated in this Judgment for the purpose of appreciating the same and answer the point as to whether Association is entitled for granting the reliefs as prayed for in this writ Appeal, set aside the order impugned in this writ appeal and the reliefs as prayed in the writ petitions?

3. It is stated by the Association that it is a registered one under the Provisions of Karnataka Societies Registration Act, 1960 & Rules framed thereunder. The case of the Association is that respondents herein on an earlier occasion insisting its members who were running Live Band should obtain necessary license under the Licensing and Controlling of Public Amusement (Bangalore City) Order 1989. The said order was questioned before this court in W.P.75/1998 and other connected writ petitions. This court has allowed the said writ petitions on 11.3.1998. The State Government aggrieved by the said order filed W.A.Nos.1446-1460/1998. The above writ appeals were allowed vide



Judgment dated 27.11.1998, by this court, against which some of the persons running Live Band filed Civil Appeal before the Apex Court in No.1857-58/2000. The said appeals were allowed after setting aside the Judgment passed by the court in the writ appeals. Thereafter the members of the Association were running Bar and Restaurant entertaining their customers through Live Bands. The State Government has passed an order namely Licensing and Controlling Places of Public Entertainment (Bangalore City) Order 2005, to regulate the activities in conducting cabaret, discotheque and Live Band in a Bar and Restaurant. The said order was questioned by some of the persons before this court by filing writ petitions contending that the same was in contravention of the Provisions of the Karnataka Police Act, 1963 (hereinafter called as the Act in short). According to them the Licensing order has to control the Live Band, discotheque and not to regulate the places of public entertainment. According to them the issuance of the notification dispensing with the objection was with a view to prevent the Association, its



members and other persons from carrying on with the activities of Live Band & other entertainment programme. Therefore, it is stated by the Association that they were not given opportunity to file objections to the notification before passing the above Licensing order of 2005 by the State Government. Therefore, it is stated that the same is in violation of Article 19(1)(a) & (g) the Right of Freedom of Speech and Expression and Right to carry on with business of live band and other entertainment activities. Hence it has prayed to quash the said order in the writ petitions filed both by the Association and others.

4. It is further stated that before inviting objections from the Association and members, the above said Licensing order was previously sanctioned by the State Government in exercise of its power under Section 31(2)(ii) of the Provisions of the Police Act. That was the subject matter of writ petition and the same were allowed by this court and directed the State Government to treat the above order and published in the




notifications as draft rules permit the writ petitioners and general public to file their objections to the same, within 30 days from the disposal of the said writ petitions. It is further observed that until the new rules are framed, the Live Bands shall not be operated in Bangalore. Again that order was questioned by the owners of Live Band & Restaurants in the Writ Appeals. The order passed in the writ petitions was confirmed by the Division Bench of this court, which was challenged before the Apex Court in C.A.No.7197/2005, before the Supreme Court. The Apex Court was of the view that the Licensing order of 2005 was quashed, therefore, the Association and its members should have permitted Live Band to continue.

5. After considering the objections filed by the Owners of Restaurant and general public to the draft Licensing and Controlling order, notification was issued on 9.12.2005, the Licensing and Controlling of Places of Public Entertainment (Bangalore City) Order, 2005 was published by the State Government. In this regard it is



contended by the learned counsel on behalf of the Appellants that the same is opposed to the Provisions of Section 31(1)(w) of the Police Act and Section 2(15) of the Act, does not encompass the live band and consequently the order which was issued is violation of Article 19(1)(a) & (g) and Article 14 of the Constitution of India and the same has been issued by the State Government with a view to harass the Association and its members, therefore, they have requested this court to quash the same by allowing this appeal.

6. The Writ petitions were opposed by the State Government and its respondents have sought to justify the same contending that the same is in conformity with the Provision of Sections 31(1)(w) & 31(2)(ii) of the Act and further contended that until and unless the constitutional validity of Section 31(1)(w) of the Police Act is questioned, the appellants have no right to challenge the licensing & controlling order before this court. The conditions incorporated in the Licensing order shall be treated as reasonable restrictions as the



same is permissible under Articles 19(2) & (6) of the Constitution of India to enjoy the fundamental rights by the appellants under Article 19(1) (a) & (g) of the Constitution of India and Section 2(15) of the Police Act. Therefore, the State Government has got every power to previously sanction the above licensing order framed by the Police Commissioner of Bangalore City. The definition of cabaret, discotheque and live band is defined under clause 2(b)(d) and (g) of the Licensing & Controlling order. The said Licensing order has passed the test of reasonableness as required under Articles 14 & 19(2)(b) of the Constitution of India as the State Government and its Officers have got a duty to regulate the above activities of the Association and its members in the State in the interest of public. The reasonableness of the Licensing Order has to be decided on the basis of law laid down by the Apex Court in the case of State of Madras Ve.V.G.Row reported in AIR 1952 SC 196. Learned Single Judge after referring to and extracting the Provisions of 2(15) of the Act, considering Section 31(1)(w) under the Police Act, the



definition of Live Band and sub-clause 3 of clause 4 of the licensing order and clause 7(a), (b), (c), (g) to (l) are examined and also considered the clauses 7 & 8 of the order is referred to by him in the impugned order with reference to the alleged violation of the fundamental rights of the Association and its members & he has rightly held that there is no violation of fundamental rights of either member of the Association or a citizen of the country to carry on with his/her trade or business wherever he/she chooses and the above clauses incorporated in the licensing order referred to above by the State Government in exercise of its statutory power under the Provisions of Section 31(1)(w) & 31(2)(ii) of the Act.

7. Therefore, the writ petition filed by the Association and others was dismissed by the learned Single Judge by recording his reasons by answering all the legal contentions urged in the petitions.



8. The correctness of the same are questioned in this appeal urging various legal grounds. Learned counsel Mr.Ashok Harnahalli places strong reliance upon the decisions of the Apex Court reported in 2004(11) SCC 26 and 2004(7) SCC 68, in support of his submissions made in the writ petition and this writ appeal and contended that the various terms and conditions incorporated in the licensing & controlling order are in violation of fundamental rights of the Association and its members and therefore, he has urged that the same are liable to be quashed by allowing this appeal. It is further contended that the manner of implementation of the Licensing order referred to supra shows arbitrariness uncontrolled and unguided discretionary powers retained by the licensing authority viz., the police authorities under the Provisions of the Police Act. They would certainly abuse the powers and further the authorities have closed their eyes to the fact of shows conducted by similarly situated persons outside Bangalore City without obtaining license under the Licensing Order. He has further placed reliance that a



recommendation has been made to give effect to the licensing order throughout the State despite such recommendation is brought to the notice, it is implemented only in Bangalore City. Therefore, the intention of the State Government would clearly shows that State Government had no intention to regulate live band in all the places of Karnataka State. The intention of the State Government is only to prohibit the live bands and other activities of the members of the association, which is being carried on in Bangalore City. Further it is contended by the learned counsel that the learned single Judge has failed to take into consideration regulation of clause 7(1)(b) of the Licensing Order, which provides the running of the business does not cause harm or inconvenience to the residents of the locality or to passers by of such premises. The said conditions would prohibit any obscene or objectionable posters or pictures to be exhibited; and that it would prevent public gambling house and should not encourage prostitution or allow the use of the Narcotic substance or permit any illegal




activities and such a regulation should contain stipulation that the conduct of passerby.

9. With reference to the above said legal contentions on the basis of the decisions placed supra, we have carefully examined and scrutinized the order of the learned single Judge to find out whether the appellant is entitled for the reliefs as prayed in this appeal. Learned Single Judge after referring to the legal grounds urged in the writ petition by the Association and another and also considered the legal submissions made by Sri.R.N.Narasimha Murthy on behalf of learned Advocate General that the licensing order framed by the Commissioner of Police of Bangalore City under Section 31(1)(w) of the Act, which is sanctioned under Section 31(2) (ii) by the State Government is legal and valid. Further rightly the learned Senior Counsel on behalf of the State Government has contended that unless and until the Constitutional validity of Section 31(1)(w) of the Police Act is questioned, the appellants are not entitled to challenge the Licensing Order and his further



AIR 1952 SC 196 and recorded the finding holding that Section 31 of the Police Act in Chapter IV would relate to the Police regulations and deals with several cases of licensing and controlling order with regard to display of pictures, number and position of lights to be used on vehicles and public amusements etc., and extracted the nature of right alleged on account of the licensing order, wherein the Association has contended that it is unreasonable restrictions upon them is also considered and answered against it. Learned single Judge is of the view that licensing & controlling order was previously sanctioned by the State Government in exercise of its power under Section 31(2)(ii) of the Police Act and the definition of the "place of public entertainment" have been properly interpreted and various clauses of the order are also examined and held that there is no violation of fundamental rights as alleged by the Association herein.

11. The conditions that will be imposed in the license that would be granted to the Licensees by the



Designated Authority is regulatory in nature, which has passed the test of reasonableness as provided under Articles 19(2) & (b) of the Constitution of India. They are neither oppressive nor cause any harm to the customers of the appellant, in view of the object and intentment of the Police Act and having regard to the nature of entertainment that will be given in the public place and the public are admitted to such place and also keeping in view the morale of the people particularly youths of the country to be protected to maintain the orderly society. It is the statutory duty of the State Government to see that the morale of the youth of the country shall not be degenerated by allowing the members of the Association to carry on with its public entertainment without imposing the conditions in the license as incorporated in the Licensing & Controlling order. It is also its duty to uphold the dignity and honour of the Artists and Viewers in the larger interest of the public at large otherwise there will be an adverse effect on the Society as a whole which will have far reaching repercussions in



the human development & cultural value of the Nation. Social Order has to be maintained in a civil society in the Constitutional philosophy and the concept as enshrined under Article 38 of the Directive Principles of State Policy for which the State and its machinery's shall strive hard to achieve the laudable object keeping in view the human rights given to the citizens of the country.

12. The judgment of the Supreme Court in STATE OF MADRAS VS. V.G. RAO's case referred to supra has been rightly applied to the present case in justification of the Licensing & Controlling Order, which has passed the test of reasonableness. The terms and conditions contained in the above licensing order must be incorporated in the license, by the Designated Authority to regulate the entertainment activities of the members of the Association. The contention urged by the learned counsel on behalf of Association that the terms and conditions incorporated in the licensing & controlling order are oppressive and unreasonable and therefore

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liable to be quashed, cannot be accepted by this Court in view of the exposition of law laid down by the Apex Court in the above case and in catena of cases.

13. We have consciously applied our mind to the legal submissions made on behalf of the appellants, after going through the conclusions arrived at by the learned Single Judge and reasons assigned by him in the impugned order, wherein he has held that the framing of licensing & controlling order by the Commissioner of Police, Bangalore City under Section 31(1)(w) which is previously sanctioned by the State Government under Section 31(2)(ii) of the Act is correctly held to be legal and valid and the same does not violate the fundamental rights of the appellant as alleged. We are in respectful agreement with the view taken by the learned single judge on the legal grounds urged in the writ petition and further the alleged violations of the fundamental rights of the Association and its members are subject to the regulation as provided under Articles 19(2) & (6) of the Constitution of India. In view of the



reasons stated by the learned single Judge in the impugned order we do not find any reason whatsoever, to interfere with the same, as the same is neither violative of fundamental rights of Association and its members nor without Authority of Law. Further the reliance placed upon the decisions of the Apex Court referred to supra do not apply to the fact situation as they are misplaced, hence the submission of the learned counsel on behalf of the appellant is liable to be rejected and accordingly rejected.

Accordingly, the appeal is ~~dismissed~~ as the same is devoid of merits.

Sd/-
Judge

Sd/-
Judge

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