
(2002) 12 AP CK 0046

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 14592 of 2002 and Batch

Big Way Bar and Restaurant

APPELLANT

Vs

Commissioner of Police

RESPONDENT

Date of Decision : 04-12-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 19(6)
Hyderabad and Secunderabad (Amusement) Rules, 1975 — Rule 112, 3, 97(1)
Hyderabad City Police Act, 1348 — Section 21, 21(1)

Citation : (2003) 1 ALD 99 : (2003) 2 ALT 707 : (2003) 1 APLJ 12 : (2003) CriLJ 1360

Hon'ble Judges : Ar. Laskhmanan, C.J;V. Eswaraiah, J

Bench : Division Bench

Advocate : M. Gandhi, for the Petitioner in WP No. 14592 of 2002, C.V. Nagarjuna Reddy, in WP No. 13908 of 2002, B. Sairam Goud, in WP No. 9729 of 2002, W.B. Srinivas, in WP No. 10077 of 2002, V. Sankara Rao, in WP No. 10195 of 2002, R. Mahender Reddy, in WP No. 14425 of 2002, V.T.M. Prasad, in WP No. 15021 of 2002, for the Appellant; Government Pleader for Home, for Respondent in all WPs., for the Respondent

Judgement

Ar. Lakshmanan, C.J.—Whether the policy decision taken by the Commissioner of Police, Hyderabad alleged to be in exercise of the provisions of the Hyderabad City Police Act, 1348-F and the Rules made thereunder not to grant or renew any amusement licences to the Bars and Restaurants to conduct singing, music and dance programmes from 25.2.2002 other than Four Star and Five Star Hotels and affirmed by the State of Andhra Pradesh would amount to unreasonable restriction offending the provisions of Article 19(1)(g) and Article 14 of the Constitution of India is the principal question that arises for consideration in these batch of writ petitions filed by various Bars and Restaurants of the Twin Cities of Hyderabad and Secunderabad.

2. In Government of A.P. v. Sri Baldev Sondli. 1975 (2) AWR 175, a Division Bench of this Court has dealt with a somewhat similar issue involved herein.

There the Commissioner of Police rejected the request of a hotel for issue of a place permit for conducting cabaret dance in the restaurant and bar in public interest. This Court held that the citizen has a fundamental right to carry on business and the State can only impose reasonable restrictions under Clause (6) of Article 19 and set aside the order of the Commissioner.

3. In the aforesaid case, the Division Bench has relied upon the decision of the Apex Court in Krishna Kumar Narula etc. Vs. The State of Jammu and Kashmir and Others, , wherein it was held that there is a fundamental right to carry on trade and business in any area including trading in obnoxious substances like liquor.

4. When these batch of writ petitions came up for hearing before a learned single Judge of this Court, noticing that the view expressed in Krishan Kumar's case was not approved in the latter Judgments by the Supreme Court and since the Division Bench of this Court has proceeded on the basis of the judgment in Krishan Kumar's case, the learned Judge was of the view that the decision of the Division Bench requires reconsideration and accordingly directed the Registry to place the papers before the Hon"ble the Chief Justice for appropriate orders as to the posting of the batch of writ petitions. The matters are thus listed before us.

FACTS:

5. Briefly noted the facts leading to the filing of the writ petitions are as follows:

WP No. 14592 of 2002 is filed by Big Way Bar and Restaurant, Secunderabad for a writ of mandamus declaring the action of the Commissioner of Police, Hyderabad in rejecting the application of the petitioner to grant amusement licence as illegal and arbitrary and consequently to direct the respondent to issue amusement licence to the petitioner.

6. The petitioner obtained necessary licences from the Municipal Corporation of Hyderabad and Prohibition and Excise Department to run the bar and restaurant which are valid till 31.3.2003. The petitioner applied for grant of amusement licence to the respondent for the year commencing from 1.1.2002 to 31.12.2002 to conduct singing and music in the restaurant on 25.4.2002 together with the prescribed fee of Rs. 4,000/- by way of challan. As there was delay in granting the licence the petitioner filed W.P. No. 11108 of 2002, which was disposed of on 25.6.2002 with directions to pass appropriate orders within a period of two weeks. Thereafter, the respondent rejected the application by Memo.No.L&O/A3/775/2002 dated 5.7.2002. The relevant portion of the order reads thus:

4. In pursuance of the High Court orders dated 25.6.2002, I inspected "M/s Big Way Bar and Restaurant" on 3.7.2002 along with DCP West Zone and DCP Traffic-I, Inspector of Police, SR Nagar PS and others.

5. There is parking space for only 20 scooters. No space is available for parking cars. Moreover music and singing adds to noise pollution, posing a nuisance to the neighbours.

6. In view of the above, the request of the applicant for grant of amusement licence to conduct singing and music in the "Big Way Bar and Restaurant, Begumpet, Green Lands, Hyderabad" is rejected for the reasons stated above.

7. At this stage it is appropriate to notice Memo.No. 22020/Legal-I/2002-3 dated 1.8.2002 issued by the Government with reference to the appeal filed by M/s. Hotel Suprabhath, Kachiguda, Hyderabad -Petitioner in W.P. No. 14425 of 2002 herein against the orders of the respondent rejecting the application for grant of amusement licence.

The management of M/s Hotel Suprabhath who are claiming as Three Star Hotel running a Bar Restaurant in the name and style of Sherry's Bar and Restaurant at Hyderabad. They have approached the Commissioner of Police, Hyderabad seeking public amusement licence as required under Rule 3 of Hyderabad and Secunderabad (Amusement) Rules, 1975. On 6.12.2001 the Commissioner of Police, Hyderabad issued instructions rejecting the applications for conducting music with male and female singers daily in the evening since 6 petty cases are pending trial against the above said bar and Restaurant. Further the Commissioner of Police, Hyderabad has also issued another memo rejecting grant of amusement licence for the year 2001 to conduct live music with male and female singers daily in the evening at Sherry's Bar and Restaurant.

2. Against the above said orders of the Commissioner of Police, Hyderabad, the petitioners have filed W.P.Nos.7510 and 9138 of 2002 for renewal of amusement licence to the petitioners concerned to hold music and singing in its restaurant by male and female singers. The High Court of Andhra Pradesh on 14.6.2002 disposed of the W.P. Nos.7510 and 9138 of 2002 with the following directions.

In the result without expressing any opinion. the writ petitions are disposed of giving liberty to the petitioner to file appeal immediately before the Government. As and when such appeal is filed, the Government may dispose of the same expeditiously.

3. Accordingly, the petitioner has filed appeal petition before the Government stating that the 6 cases mentioned in the Memo of the Commissioner of Police, Hyderabad have already been disposed of by the 8th Special Metropolitan Magistrate, City Criminal Courts, Nampally, Hyderabad. Against the lower Court orders, the petitioners have filed W.P.No. 7510 of 2002 in A.P. High Court. Further they have submitted that the policy was not applied to other Bar and Restaurants which are very much nearer to the appellant under the name and style of M/s. Shiva's Bar and Restaurant at Kachiguda. As the matter stands thus they have submitted detailed application to the Commissioner of Police, A.P., Hyderabad. The said application was also rejected on 30.4.2002 with an observation that in view of the severe opposition to amusement programmes by common people, the application of the appellant is rejected. Against the said orders rejecting the application, the petitioners have filed another W.P.No. 9138 of 2002 in Hon''ble High Court of Andhra Pradesh. The Hon''ble High Court have

passed common orders in the two W.Ps as mentioned in para 2 above.

4. The Commissioner of Police, Hyderabad has reported that permissions were granted to some of the Bars and Restaurants to hold music and singing, but some of them have violated the licence conditions. The police booked cases against them and issued notices for cancellation of licence after following the prescribed procedure. Further a decision was also taken by the Commissioner of Police, not to grant or renew any amusement licences to the Bars and Restaurants to hold music and singing programmes since 25.2.2002 keeping in view the prevailing conditions as the Bar and Restaurants run beyond the permitted time and have been causing nuisance to the neighbours and adding to sound pollution.

5. In the above circumstances, Government felt that the appeal submitted by the appellant does not merit any consideration and is of the considered view that it is not a fit case to interfere with the orders passed by the Commissioner of Police, Hyderabad City.

6. Government after careful consideration of the matter and keeping in view of the orders of the Hon"ble High Court orders 1st cited decided to stop giving further amusement licences to any bars and restaurants in the State other than Four Star and Five Star Hotels. Therefore, the appeal of M/s. Hotel Suprabhath (Three Star Hotel), Hyderabad is rejected.

A.K. Tioidi

Principal Secretary to Government.

8. It is contended that the policy decision of the respondents would amount to negating the fundamental right of the petitioner to carry on business and trade guaranteed under Article 19(1)(g) of the Constitution of India.

9. In the counter it is stated that no amusement licence was granted to the petitioner as claimed and the petitioner without having any licence or any orders was conducting the dance and music programmes with orchestra by women in obscene manner to attract the customers in his Bar and Restaurant and cases were booked for violation of the licence conditions for organising semi-nude dances by female dancers to entice customers. It is also stated that enquiries revealed that lady/girl singers from poor economic strata from different parts of the country dance and sing before the men in the Bars that the men sit in the bars by paying tips to the singers who provoke them by exposing their bodies and singing vulgar songs and also sit with customers consuming liquor for longer time and the managements do not close their bars and restaurants in time thereby leading to disturbance to the neighbours. They have been making easy money by exploiting the destitute, helpless and gullible girls by compelling and forcing them to dance in the bars and restaurants exposing their bodies in vulgar, obscene and indecent manner solely with ill-motive of attracting customers. The dancers expose their bodies and make indecent and provocative gestures/acts

causing embarrassment and lowering dignity and prestige of women, apart from increasing sound pollution and disturbing the neighbours. Considering the interests of the public at large the applications for grant of licence were rejected.

10. W.P. No. 13908 of 2002 is filed by M/s. Caesars Palace Bar and Restaurant, Abids impugning the proceedings of the respondent dated 25.7.2002 rejecting application for grant of permission to have an orchestra (music) in the restaurant premises. According to the petitioner, the Bar and Restaurant was established investing an amount of Rs.60 lakhs after obtaining the necessary permissions from the concerned authorities and it is providing high quality of food and entertainment to families and individuals. He was unable to compete with other bar and restaurants having orchestra and unable to attract customers and thereby incurring heavy losses. Therefore, in order to improve his business he also wants to establish orchestra facility in the restaurant. The bars and restaurants similarly situated were given permission to have orchestra but the petitioner was denied such permission.

11. Apart from the grounds taken in the counter filed in W.P.No.I4592 of 2002, it is stated in the counter filed herein that fire fighting arrangements are not satisfactorily provided in the restaurant and the report of the Deputy Commissioners of Central Zone and Traffic-I are awaited. It is also stated that the petitioner has not exhausted the statutory remedy of appeal provided under Rule 5 of Hyderabad and Secunderabad (Amusement) Rules, 1995.

12. W.P.No.9729 of 2002 is filed by M/s. Lilly Bar and Restaurant, Narayanaguda for a direction to the 1st respondent to grant temporary licence to hold Indian Music and Singing in the restaurant. The bar is having valid licence till 31.3.2002. The petitioner made application on 12.4.2002 for grant of amusement licence together with the prescribed fee but the same has not been granted.

13. W.P. No. 10077 of 2002 is filed by the managing partner of M/s. 9-Gems Bar and Restaurant, Secunderabad in not considering the application of the petitioner for grant of amusement licence to hold music and singing by male and female artists at the restaurant. The petitioner filed the application for grant of amusement licence on 12.11.2002 and the 1st respondent by Memo directed him to furnish police licence. The petitioner filed W.P. No.24031 of 2001 wherein this Court issued interim directions to consider the application for grant of licence. However, the 1st respondent rejected the application by Memo-dated 6.12.2001 on the ground that the petitioner does not possess police licence. After obtaining MCH trade licence the petitioner again approached the respondent for grant of amusement licence together with the prescribed fee, but the same has not been considered and the same is still pending though all the objections taken were complied with.

14. In the counter it is stated that the petitioner restaurant is not having police licence and it is functioning on the strength of excise licence from the Prohibition

and Excise Department and therefore the application for grant of amusement licence was rejected.

15. W.P. No. 10195 of 2002 is filed by M/s. Kaundinya Bar and Restaurant, Nacharam, R.R. District aggrieved by the action of the Superintendent of Police, Rangareddy District in memo dated 8.5.2002 rejecting the application of the petitioner for grant of permission to conduct music and singing in the Bar and Restaurant. The petitioner claims that the restaurant has valid licence till 31.3.2003 and it has applied on 7.2.2002 to the respondent for grant of licence to run light music as per G.O. Ms. No. 156 dated 5.7.2001 under category V together with the prescribed fee. Earlier the petitioner filed W.P. No. 3233 of 2002 which was disposed of with a direction to consider the application of the petitioner within a period of four weeks and by the impugned proceedings dated 8.5.2002 it was rejected on the ground that the area where the bar and restaurant is located is not-advisable to conduct such programmes. It is contended that as per G.O. Ms. No. 156 dated 5.7.2001 it is obligatory on the part of the respondent to grant permission.

16. In the counter it is stated that under G.O. Ms. No. 156 there are certain pre-requisites to be satisfied before grant of licence. The enquiries made by the respondent revealed that the place where the restaurant is located is not a fit place to be considered for grant of licence because it is located on the main road from Mallapur to Habsiguda side and in and around number of residential houses are located and there is every likelihood of breach of peace and tranquility and may create law and order problem. The area predominantly inhabited by nearly 400 small and large-scale industries and always there will be flow of work force round the clock and hence the area is not a fit place to be considered for grant of licence.

17. W.P. No. 14425 of 2002 is filed by M/s. Hotel Suprabhat Kachiguda, Hyderabad to quash the proceedings of the 1st respondent dated 1.8.2002 and to direct the respondents to accord amusement licence to the petitioner for the year 2002-2003. The petitioner is a three star hotel and has regular customers of high class and they requested the management to provide entertainment by way of light music with male and female signers daily in the evenings at the bar and restaurant. Number of bars and restaurants are granted such permission to provide such entertainment. The petitioner made representations on 13.3.2001 and 27.11.2001 for grant of amusement licence for the year 2001-02 to conduct live music with male and female signers daily in the evenings at Cherrys Bar and Restaurant of the petitioner's hotel but the same was rejected on 6.12.2001 on the ground that some cases were pending against the petitioner. Again on 14.12.2001 the petitioner made representation stating all the cases were closed, but the same was not considered. The petitioner filed W.P. No. 7510 of 2002 and on 30.4.2002 the 2nd respondent rejected the application on the ground that there was severe opposition by common people. The same was again challenged in W.P. No. 9138 of 2002. Both the writ petitions were disposed with a direction

to avail the remedy of appeal available under Rule 5 of Hyderabad and Secunderabad (Amusement) Rules 1995. Thereafter the petitioner filed the appeal on 24.6.2002, which was disposed of by the Government by order-dated 1.8.2002, which was quoted in the earlier paragraphs.

18. W.P. No. 15021 of 2002 is filed by M/s. Kings Palace Restaurant and Bar, (Aahwanam) Abids for the following reliefs:

To issue a writ of mandamus or any other appropriate writ or order or direction under Article 226 of the Constitution of India and declare the decisions of the (a) 1st respondent in Memo.No. 2260/Legal-I/200203 dated 1.8.2002 not to give amusement licences to any bars and restaurants in the State other than 4 star and 5 star hotels; (b) 2nd respondent not to grant or renew any amusement licences to bars and restaurants to hold music and singing programmes since 25.2.2002 in Order No. &O/A3/667/2002 dated 5.7.2002 as bad in law, violative of the petitioners rights guaranteed by Articles 14, 19(1)(g) and 21 of the Constitution of India and ultra vires the provisions of the Hyderabad and Secunderabad (Amusement) Rules, 1995 as contained in G.O. Ms. No. 472 Home (Police) Department dated 30.12.1993 and violative of the relevant provisions of the Hyderabad City Police Act and consequently direct the 2nd respondent to forthwith grant to the petitioner an amusement licence for music and songs performance by male and female singers under the Hyderabad and Secunderabad (Amusement) Rules, 1995 as contained in G.O. Ms. No. 472 Home (Police) Department dated 30.12.1993.

19. The petitioner is having a valid licence issued by the excise authorities for the sale of Indian/Foreign liquor till 31.3.2003. Petitioner applied for grant of amusement licence on 9.4.2002. As the same was not disposed of, petitioner filed W.P. No. 8394 of 2002, which was disposed of with a direction to the Commissioner of Police to dispose of the application within one week. The Commissioner rejected the application on 5.7.2002 as under:

In pursuance of the direction of the Hon'ble High Court, I inspected the Kings Palace Restaurant and Bar (Hotel Aahwanam), NTR Estate, Abids, Hyderabad on 3.7.2002 along with the Dy. Commissioners of Police, Central Zone and Traffic-1 and other officers. There are 162 chairs in this restaurant. It can easily accommodate about 200 customers. There are no first aid fire fighting arrangements at all, anywhere in this restaurant. There is no exclusive parking space earmarked for this bar and restaurant.

The restaurant is on the 3rd floor. The ground floor has shops and the 1st and 2nd floor have 48 rooms of "Aahwanam Hotel". The music of this restaurant adds to noise pollution and disturbs the customers sleeping in these 48 rooms.

In the event of any calamity the escapes provided to the customers are inadequate. Hence it is not advisable to permit any music and singing.

Therefore, your application for conducting Orchestra Music and singing at the

said bar and restaurant have been examined and rejected for the reasons stated above.

20. The above order was challenged in W.P. No. 12266 of 2002. The said writ petition was disposed with a direction to file an appeal before the 1st respondent. The petitioner filed appeal on 11.7.2002 and the same has not so far been disposed of. The petitioner contends that filing of an appeal under Rule 5 of the Hyderabad and Secunderabad (Amusement) Rules, 1995 would be an empty formality in view of the orders dated 1.8.2002 passed by the Government in respect of the petitioner in W.P. No. 14425 of 2002 and in view of the said orders the appeal would be rejected by the Government. The petitioner also disputes about the grounds taken by the Commissioner regarding the availability of fire fighting equipment, exclusive parking place for parking the vehicles etc.

21. It is contended that playing of music and singing of songs would not cause harm to the general public and the same is not prohibited by law and there cannot be a blanket ban on such activity.

22. In the counter-affidavit apart from the common grounds stated in the counter filed in W.P.No. 14592 of 2002, it has reiterated what has been stated in the impugned order of the Commissioner of Police.

Submissions :

23. Mr. Gandhi, learned Senior Counsel would submit that the decision of the Commissioner of Police not to grant licences to hold music and dance programmes in the restaurants would amount to negating the fundamental right of the petitioners to carry on business and trade guaranteed to them under Article 19(1)(g) of the Constitution of India. Though the right is subject to reasonable restrictions, the Commissioner, under the guise of regulating the activity under the provisions of the Act and the Rules framed under the Act, cannot completely prohibit the trade altogether. He would further submit that the Hyderabad and Secunderabad Amusement Rules, 1995 do not have the effect of effacing the Amusement Rules, 1351 Fasli and the said rules only relate to regulation of admission into a place of public amusement by sale of tickets or passes and have no application to regulation of public amusement. He placed reliance on the following decisions:

1. Chintaman Rao Vs. The State of Madhya Pradesh,
2. Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others,
3. Bennett Coleman and Co. and Others Vs. Union of India (UOI) and Others,
4. M/s. Khoday Distilleries Ltd., State of Karnataka AIR 1995 SCW 313.
5. Govt. of A.P. v. Sri Baldev Sondli 1995 AWR 175.
6. Anand v. State of Tamil Nadu, 1997 MLJR413.

24. Mr. C. K Nagarjuna Reddy, learned Counsel appearing for the petitioner in W.P. No. 13908 would submit that the application of the petitioner has been rejected on flimsy ground and that the same is arbitrary, illegal and discriminatory and violative of Article 14 of the Constitution of India inasmuch as similar permission was given to as many as 25 restaurants in the city. He would further submit that music and singing cannot add to noise pollution as all the programmes will be conducted in closed doors. He would also submit that any restriction, which the State wants to bring in, must be a reasonable one within the meaning of Article 19(6) of the Constitution of India. In support of his contention he has placed reliance on the decision of the Apex Court in *Secretary to Govt., Tamil Nadu and Another Vs. K. Vinayagamurthy*, .

25. Mr. V. Sankararao, learned Counsel would submit that the Act does not empower the authority to refuse grant of licence on policy decision. He would submit that the Government having issued G.O. Ms. No. 156 dated 5.7.2001 permitting grant of licences under various categories, the 1st respondent cannot refuse to grant the licence. Conduct of an orchestra with singers during dinner time cannot give rise to any law and order problem as contended by the respondents.

26. Sri Mahender Reddy, learned Counsel appearing for the petitioner in W.P. No. 14425 of 2002 would submit that right to trade or business can be restricted only with certain restrictions but absolute prohibition is arbitrary and unconstitutional. The action of the authorities on one hand permitting some restaurants to conduct singing, music and dance programmes in some restaurants while restricting the other restaurants to do such activity on the other hand would be discriminatory and violative of Article 14 of the Constitution of India. The decision of the respondents to restrict grant of licences only to four star and five star hotels is, therefore, arbitrary, illegal and discriminatory inasmuch as the rules do not provide such classification between the same set of persons.

27. Sri V.T.M. Prasad, learned Counsel appearing for the petitioner in W.P. No. 15021 of 2002 would submit that playing of music and signing of songs would cause no harm to the general public and such activity in restaurants is not prohibited by law. He would submit that there cannot be a blanket ban on such activity. The classification made by the respondents between four star and five star hotels as one group and the other star hotels and other restaurants as other group is not a reasonable classification as in both the cases permission relates to only music and singing. The total prohibition of grant of licences to restaurants and hotels other than four star and five star hotels would amount to unreasonable restriction. He would submit that though the rights under Article 19 are not absolute but qualified, total prohibition of right to trade in is unconstitutional. Only those professions, which are inherently vicious or obnoxious or injurious to health, safety and welfare of general public, can be prohibited but not singing, dance and music programmes, which are primarily come under the category of amusement or entertainment. He would submit that

if the conditions of licence are violated and licensees indulge in encouraging obscenity, indecency or vulgarity in dances the authorities would always be at liberty to regulate the same by taking recourse to law. He would further submit that the fire extinguishers placed in the restaurant of the petitioner would be sufficient to meet any emergency and there is also ample space for parking of the vehicles both for the hotel as well as visitors to the bar and restaurant. He would also submit that there would be no scope to cause sound pollution, as all the rooms are centrally air-conditioned. Mr. Prasad would submit that filing of appeal under Rule 5 of the Amusement Rules, 1995 would be an empty formality because in similar appeals the authorities have rejected the appeals on the ground that a policy decision has been taken not to grant licences to bars and restaurants other than four star and five star hotels. He has placed reliance on the decisions of the Apex Court in *Khoday Distilleries Ltd. v. State of Karnataka* and in *Dr. K. R. Lakshmanan Vs. State of Tamil Nadu* and another, .

28. The learned Government Pleader for Home would submit that the right guaranteed under Article 19 is not absolute right and total prohibition of any trade, which is not in the interest of general public, can be imposed by the State. He would submit that if classification is warranted to achieve the logical end of general public interest, then the action would not amount to unreasonable restriction. He would submit that some of the licensees have violated the conditions of licence by organising semi-nude dances by female dancers to entice customers. The licensees in order to make money are exploiting the helpless and hapless destitutes by compelling them to dance in the bars and restaurants exposing their bodies in vulgar, obscene and indecent manner, which is lowering the dignity and prestige of women. He would submit that in some cases sufficient safety measures like provision of fire extinguishers are not taken and in some cases no provision has been made for parking the vehicles. He would also submit that the activity of singing and dance in the bars and restaurants is also adding noise pollution, which is not in the interest of general public. In order to prevent the illegal activities, the learned Government Pleader contends, that the Commissioner of Police has taken a policy decision not to grant licences to bars and restaurants other than four star and five star hotels which has been accepted by the State Government in principle. He, therefore, submitted that no interference is called for in the matter.

Constitutional and Statutory Provisions:

29. Article 19(1)(g) provides that all citizens shall have the right to practise any profession or to carry on any occupation, trade or business. This right is however subject to Clause (6) of Article 19 which reads as follows:

(6) Nothing in Sub-clause (g) of the said clause shall affect the operation of any existing law insofar as it imposes or prevent the States from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and in particular, nothing in the said sub-clause shall affect the operation of any existing law insofar as it

relates to, or prevent the State from making any law relating to-

- (i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business or
- (ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or "service, whether to the exclusion, complete or partial, of citizens or otherwise.

30. Hyderabad City Police Act, 1348-Fasli (Act No. IX of 1348 F) ("for short the Act") has been enacted with the object of making the Hyderabad City Police an effective means for prevention and detection of crimes, maintenance of peace and investigation into circumstances. Subsections (g) and (h) of Section 3 of the, Act defines "public place of amusement" and "public place of entertainment" in the following terms:

Public place of amusement means every place or house or tent or enclosure or both or any other building whether permanent or temporary where singing, music, dancing or any diversion or game and anything giving amusement or the means of carrying on the same is provided and to which the public are admitted either on payment of money or with the intention that money may be collected from them on admission and shall include the race course, circus, theatre, music and dancing hall, billiard room, gymnasium or any other place allotted for such purpose.

Public place of entertainment means any enclosed or open place to which the public have access and where any kind of articles of food and drink are supplied for consumption by any person or for the profit of any person owning or having any interest in or managing such place and shall include a refreshment room, tea house, liquor house, boarding house, lodging house, hotel, tavern sendhi, wine, ganja, toddy, bhung, or opium shops.

31. Section 21 of the Act empowers the Police Commissioner to make rules not inconsistent with the provisions of the Act for regulation of traffic and for preservation of order.

32. Clause (f) of Sub-section (1) of Section 21 empowers the Commissioner of Police to make rules regarding licensing for or regulating the following matters and where it is likely to cause inconvenience, delay, danger, or damage to the residents or the persons passing in the vicinity, prohibiting-

- (i) the keeping of a place of public amusement or place of public entertainment;
- (ii) the playing of music in public streets or public places;
- (ii-a) the using of a loud speaker in any public place, or places of public entertainment;
- (iii) the illumination in pubic street or public place, or on any building adjacent to the public street, by persons other than Government or Municipal Officers

authorised in this behalf;

(iv) The carrying through public streets or public places gun powder or other explosive substances;

(v) Blasting.

33. Clause (g) of Sub-section (1) of Section 21 provides to make rules regulating the entrance or exit at any place of public amusement or place of public entertainment or at any meeting or public assembly and providing for the maintenance of public peace and the prevention of disturbance at such places.

34. Clause (gg) of Sub-section (1) of Section 21 empowers the Commissioner to make rules regulating or prohibiting the sale of any ticket or pass for admission, by whatever name called, to a place of public amusement.

35. Sub-section (3) of Section 21 of the Act provides that notwithstanding the provisions contained in this section or any rules made thereunder, it shall always be lawful for the Commissioner of City Police, Hyderabad to refuse a licence for or to prohibit the establishment of a place of public amusement or a place of public entertainment by a notorious scoundrel or a bad character.

36. In exercise of the powers under Clauses (f) (g) and (h) of Sub-section (1) of Section 21 of the Act, rules relating to the establishment, regulation and licensing of places of public amusement are made with the assent of H.E.H. and Nizam's Government known as Hyderabad Public Amusement Rules, 1351-Fasli (for short Amusement Rules, 1351-F).

37. Rule 2 relates to classes of places of public amusement. It reads thus:

For the purpose of issue of licences and regulation under these rules, the places of public amusement shall be the following classes.

Class (A) shall include every theatre, circus, music-hall, skating rink and such places of public amusement as may be included in this class and notified as such by the Commissioner of Police.

Clause (B) includes every such place of public amusement which may be declared to be a place of public amusement within the meaning of Clause (g) of Section 3 of Hyderabad City Police Act, but which does not fall under class (A).

38. Rule 106 relating to licence for performances reads as under:

No person who has been granted a licence for such premises shall be authorised, without obtaining a licence in form (c) annexed to these rules (which shall for the purpose of this chapter be called licence for performance) to permit a public display of any short or performance of a drama or dance or holding of any performance or exhibition in such premises.

39. Rule 108 provides that no person shall be authorised to hold public demonstration of any drama or music and dance party or exhibition at such area

without obtaining a licence and no person, before licence has been issued shall held any such demonstration or exhibition etc., at any such place which is not permitted by the Commissioner of Police.

40. Rule 112 deals with cases in which licence for play and performance shall be refused. It provides:

(i) The Commissioner of Police shall be authorised to refuse any or all the dramas and demonstrations mentioned in such application in his opinion, they are;

(a) Obscene or immoral;

(b) Adverse or comprised of undesirable persons;

(c) Injuring the religious feelings of any person or class of persons;

(d) Revolting or causing political unrest;

(e) May disturb public safety or create feelings of hatred among different committees; or

(f) Objectionable for any other reasons.

Rule 115 provides thus:

No person to whom licence for demonstration has been issued under these rules shall be authorised to permit any such matter as mentioned below.

i. Indecent or obscene talk.

ii. Any such act which is likely to create feelings of revolt or political unrest.

iii. Made dressing obscene drama or action.

iv. Loathsome personation of any dead or living person.

v. Any such act which is likely to cause disturbance in the public safety or hatred among different class of people hatred or injury to the religious feelings of any person or body of person.

vi. Any dangerous display or exhibition of wild animals.

vii. Any such demonstration which is likely to cause danger or loss to the public.

Rule 126 relates to matters which the applicant shall satisfy the Commissioner of Police.

It shall be binding upon every such person who applies for establishing such area to convince/satisfy the Commissioner of Police with regard to the following matters.

i. The situation of the proposed area is suitable.

ii. Such area is suitable for the purpose for which it shall be used.

iii. In such area conveyance are sufficient and if such area is situated in any building, tent or other construction house or room, the precautionary measures against fire and sources of air are sufficient and suitable.

41, In exercise of the powers conferred by Clause (gg) of Sub-section (1) of Section 21 of the Hyderabad City Police Act, the Commissioner of City Police, Hyderabad issued Rules known as Hyderabad and Secunderabad (Amusement) Rules, 1995. Rule 3 provides that no person or an organisation or a society whether registered or unregistered shall without a licence obtained from the licensing authority establish or run public amusement at a public place. Rule 4 relates to regulation of admission into a place of public amusement by sale of tickets or passes. Rule 5 provides appeal against the orders passed by the licensing authority in refusing the licence or against the rates of tickets considered to be on higher side lies to the government and whose orders thereon shall be final.

Case Law.:

42. Under Article 19(1)(g) a citizen has a fundamental right to practise any profession or to carry on any occupation, trade or business. However, such right is subject to such reasonable restrictions that may be imposed by the State under Clause (6) of Article 19. Under Clause (6) the State has power either to completely prohibit or to permit with certain reasonable restrictions certain professions, which are not in the interests of the general public. In *Chintamanrao v. State of M.P.* a Constitution Bench of five learned Judges of the Apex Court explaining the phrase "reasonable restrictions", held:

The phrase "reasonable restriction" in Article 19(6) connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The word "reasonable" implies intelligent care and deliberation, that is the choice of a course which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Article 19(1)(g) and the social control permitted by Clause (6) of Article 19, it must be held to be wanting in that quality.

43. Though a citizen has the fundamental right to carry on any business of his choice, there is no right to carry on any business, which is inherently dangerous to the society, and such business may be absolutely prohibited or permitted to be carried only under the licence of the State.

44. In *State of Bombay v. Balsara* AIR 1951 SC 318, a Constitution Bench of the Apex Court held that a total prohibition on potable liquor would be reasonable. In *T.B. Ibrahim Vs. Regional Transport Authority, Tanjore*, , the Constitution Bench of the Supreme Court held that the restrictions placed upon the use of the bus-stand for the purpose of picking up or getting down passengers cannot be considered to be unreasonable and there is no fundamental right in a citizen to

carry on business wherever he chooses and his right must be subject to any reasonable restriction imposed by the executive authority in the interests of the public convenience.

45. In *Cooverjee B. Bharucha Vs. The Excise Commissioner and the Chief Commissioner, Ajmer and Others*, , it was held:

In order to determine the reasonableness of the restriction regard must be had to the nature of the business and the conditions prevailing in the trade. It is obvious that these factors must differ from trade to trade and no hard and fast rules concerning all trades can be laid down. The right of every citizen to pursue any lawful trade or business is obviously subject to such reasonable conditions as may be deemed by the Government authority of the country essential to the safety, health, peace, order and morals of the community.

The Apex Court held:

Laws prohibiting trades in noxious or dangerous goods or trafficking in women cannot be held to be illegal as enacting a prohibition and not a mere regulation. The nature of the business is, therefore, an important element in deciding the reasonableness of the restrictions. The right of every citizen to pursue any lawful trade or businesses is obviously subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, order and morals of the community. Some occupations by the noise made in their pursuit, some by the odours they engender, and some by the dangers accompanying them, require regulations as to locality in which they may be conducted. Some, by the dangerous character of the articles used, manufactured or sold, require also special qualifications in the parties permitted to use, manufacture or sell them.

It was further held:

There is no inherent right in a citizen to sell intoxicating liquors by retail; it is not privilege of a citizen. As it is a business attended with danger to the community, it may, as already said, be entirely prohibited or be permitted under such conditions as will limit to the utmost its evils. The manner and extent of regulation rest in the discretion of the governing authority. That authority may vest in such officers as it may deem proper the power of passing on applications for permission to carry it on, and to issue licences for that purpose. It is a matter of legislative will only.

46. In *The State of Bombay Vs. R.M.D. Chamarbaugwala*, , another Constitution Bench of five learned Judges of the Supreme Court dealing with the provisions of Bombay Lotteries and Prize Competitions Control and Tax Act (Act 54 of 1948) held that nobody can be considered to have a fundamental right to carry on trade or business in activities which are inherently vicious and pernicious such as betting and gambling and a citizen cannot get protection under Article 19(1)(g) for the same. It was held that gambling activities from their very nature and in

essence are extra-commercium although the external forms, formalities and instruments of trade may be employed and they are not protected either by Article 19(1)(g) or Article 301 of the Constitution.

47. In *Narendra Kumar and Others Vs. The Union of India (UOI) and Others*, , which is also a decision of the Constitution Bench of five learned Judges of the Supreme Court; it was held that the word "restriction" in Article 19(5) and (6) of the Constitution includes cases of prohibition also. It was, however, held that where the restriction reaches the stage of total restraint of rights, special care has to be taken by the Courts to see that the test of reasonableness is satisfied by considering the question in the background of the facts and circumstances under which the order was made, taking into account the nature of the evil that was sought to be remedied by such law, the ratio of the harm caused to individual citizens by the proposed remedy, the beneficial effect reasonably expected to result to the general public, and whether the restraint caused by the law was more than what was necessary in the interests of the general public.

48. Another Constitution Bench of five learned Judges of the Apex Court in *Krishan Kumar v. State of Jammu and Kashmir (supra)* however, held that dealing in liquor is business and a citizen has a fundamental right to do business in liquor but the State can make a law imposing reasonable restrictions on the said right, in public interests.

49. Referring to *Krishan Kumar's* case, in *Amar Chandra Chakraborty Vs. The Collector of Excise, Government of Tripura and Others*, , the Apex Court held thus:

It is no doubt true that this Court in the case cited held that dealing in liquor is business and a citizen has a right to do business in that commodity but was added that the State can make a law imposing reasonable restrictions on the said right in public interest. In dealing with reasonable restrictions no abstract standard or general pattern is possible to lay down. In each case, regard has to be had to the nature of trade or business, the conditions prevailing in such trade or business, the nature of the infringement alleged, and the underlying purpose of restriction, the imposition of which is alleged to constitute an infringement.

50. In *Nashirwar and Others Vs. State of Madhya Pradesh and Others*, , the Apex Court referring to *Krishan Kumar's* case (supra) held that it was not correct to read the said decision to mean that there was a fundamental right to do business in liquor. According to the Court, the said decision was that dealing in liquor is business and citizen had a right to do business in that commodity and the State could impose reasonable restrictions on that right in public interest.

51. In *Khoday Distilleries Ltd. v. State of Karnataka (supra)* the Supreme Court in extenso dealt with the issue and on a survey of all the decisions of the Constitution Benches right from the case in *Chintamanrao v. State of Madhya Pradesh (supra)* held that the rights under Article 19 are not absolute but qualified and such rights do not extend to practising profession or carrying on

business etc., which are inherently vicious or pernicious or obnoxious or injurious to health, safety and welfare of general public. Right to trade or business in potable liquor is not a fundamental or legal right. It was held:

The rights protected by Article 19(1) are not absolute but qualified. The qualifications are stated in Clauses (2) to (6) of Article 19. The fundamental rights guaranteed in Article 19(1)(a) to (g) are, therefore, to be read along with the said qualifications. Even the rights guaranteed under the Constitution of the other civilised countries are not absolute but are read subject to the implied limitations on them. Those implied limitations are made explicit by Clauses (2) to (6) of Article 19 of our Constitution. The right to practise any profession or to carry on any occupation, trade or business does not extend to practising a profession or carrying on an occupation, trade or business which is inherently vicious and pernicious and is condemned by all civilised societies. It does not entitle citizens to carry on trade or business in activities which are immoral and criminal and in articles or goods which are obnoxious and injurious to health, safety and welfare of the general public i.e., *res extra commercium* (outside commerce). There cannot be business in crime.

52. It was also held that restrictions can be placed even by subordinate legislation or even by executive order provided it is issued by Governor of State. It was held:

Clauses (2) to (6) of Article 19 make no distinction between the law made by the Legislature and the subordinate legislation for purpose of placing the restrictions on the exercise of the respective fundamental rights mentioned in Article 19(1) (a) to (g). Clause (6) of Article 19, only speaks of operation of any existing law insofar as it imposes "from making any law imposing" reasonable restrictions on the exercise of the rights conferred by Article 19(1)(g). There is nothing in this provision which makes it imperative to impose the restrictions on trade or business only by a law enacted by the Legislature. Hence the restriction on trade or business in potable liquor and alcohol can also be imposed by any subordinate legislation so long as such legislation is not violative of any provisions of the Constitution. This is apart from the fact that the trade or business in potable liquor is a trade or business in *res extra commercium* and hence can be regulated and restricted even by executive order provided it is issued by the Governor of the State.

53. The Apex Court has explained the view taken in Krishan Kumar's case (*supra*) as under:

It will thus be obvious that all the decisions except the decision in Krishna Kumar Narula etc. Vs. The State of Jammu and Kashmir and Others, have unanimously held as shown above that there is no fundamental right to carry on trade or business in potable liquor sold as a beverage. As pointed out above, the proposition of law which is put in a different language in K.K. Narula's case has been explained by the subsequent decisions of this Court including those of the

Constitution Benches. The proposition of law laid down therein has to be read in conformity with the proposition laid down in that respect by other decisions of this Court not only to bring comity in the judicial decisions but also to bring the law in conformity with the provisions of the Constitution of India..... Whether one states as in K.K. Narula's case that the citizen has a fundamental right to do business but subject to the State's powers to impose valid restrictions under Clause (6) of Article 19 or one takes the view that a citizen has no fundamental right to do business but he has only a qualified fundamental right to do business, the practical consequence is the same so long as the former view does not deny the State the power to completely prohibit trade or business in articles and products like liquor as a beverage or such trafficking as in women and slaves. This Court in Krishna Kumar Narula etc. Vs. The State of Jammu and Kashmir and Others, has not taken such view.

54, Very recently in Secretary to Govt, Tamilnadu and Anr. v. K. Vinayagamurthy (supra), the Supreme Court reiterated the view taken by various Constitution Benches in the following terms:

So far as the trade in noxious or dangerous goods is concerned, no citizen can claim to have right in the same and intoxicating liquor being a noxious material, no citizen can claim any inherent right to sell intoxicating liquor by retail. It cannot be claimed as a privilege of a citizen of a State. That being the position, any restriction which the State brings forth, must be a reasonable restriction within the meaning of Article 19(6) and reasonableness of the restriction would differ from trade to trade and no hard and fast rule concerning all trades can be laid down.

55. From an analysis of the aforesaid authorities of the Apex Court, the following points would emerge:

1. The right protected under Article 19(1)(g) is not an absolute right but only qualified and is subject to the restrictions that may be imposed under Clause (6) of Article 19 in general public interest.
2. The right to practise any profession or to carry on any occupation, trade or business does not extend to practising a profession or carrying on an occupation, trade or business which is inherently vicious and pernicious and which are obnoxious and injurious to health, safety and welfare of the general public. The State has power either to completely prohibit or to permit such trade or business with certain reasonable restrictions.
3. The right of every citizen to pursue lawful trade or business is subject to such reasonable restrictions that may be imposed by the Governing authority, which is essential to the safety, health, peace, order and morals of the community. Reasonableness of the restriction, however, differs from trade to trade and no hard and fast rule concerning all trades can be laid down.
4. Any imposition, which restricts a citizen's right to carry on an occupation,

trade or business, but is not authorised by law, cannot be covered by Clause 6 and must be held to be invalid. Restriction can be placed by subordinate legislation or even by executive order provided it is issued by Governor of State.

5. In order to determine reasonableness of the restriction regard must be had to the nature of the business or trade, the conditions prevailing in the said trade or business, the nature of infringement alleged, the manner and extent of regulation rest in the discretion of the governing authority.

6. Restriction includes prohibition also and in such cases special care has to be taken by the Courts to see that the test of reasonableness is satisfied by considering the question in the back ground of the facts and circumstances of the case, the nature of the evil sought to be remedied by law, the ratio of the harm caused to individual citizens by the proposed remedy, the beneficial effect reasonably expected to result to the general public, and whether the restraint caused by the law was more than what was necessary in the interests of the general public.

Findings :

56. We may notice that the decision of the Constitution Bench of the Apex Court in *Krishan Kumar's* case has not been overruled by any of the Constitution Benches in the latter decisions referred to *supra*. We have earlier extracted the observations of the Apex Court in *Khoday Distilleries Ltd. v. State of Karnataka* wherein the Apex Court has explained the decision in *Krishan Kumar's* case. It was observed that the Constitution Bench in *Krishan Kumar's* case has not denied the power of the State to completely prohibit trade or business in articles and products like liquor as a beverage etc. In *Krishan Kumar's* case, it was held that dealing in liquor is business and a citizen has a right to do business in that commodity, but the State can make a law imposing reasonable restrictions on the said right in public interests. In that view of the matter, the reliance placed by a Division Bench of this Court in *Govt. of A.P. v. Sri Baldev Sondli* (*supra*) on *Krishan Kumar's* case is of no consequence. In *Krishan Kumar's* case, it was clearly held that a Legislature can impose restrictions on, or even prohibit the carrying on of a particular trade or business, and the Court, having regard to the circumstances obtaining at particular time or place, may hold the restriction or prohibition reasonable. Therefore, in our considered opinion, the judgment of the Division bench of this Court in *Baldev Sondli's* case does not require reconsideration. Further, this Court in the said case has not solely relied upon the decision in *Krishan Kumar's* case in coming to the conclusions therein. This Court has clearly held that the State has the power not only to regulate a business by imposing reasonable restrictions in the interest of the general public but can also prohibit a business altogether if, in its opinion, it is inimical to the public welfare or dangerous to the community or subversive of its moral. It was also held that what is a reasonable restriction must be decided by the Court by looking into the circumstances and the manner in which the restriction is imposed, the nature of the right alleged to have been infringed, the underlying

purpose of the restriction imposed, the extent and the urgency of the evil sought to be remedied thereby. Therefore, this Court has clearly held that State has power to prohibit a business altogether in the interest of general public or to impose reasonable restrictions. This Court by passing reference has merely referred to the observations in Krishan Kumar's case.

57. We may now examine the reasonableness or otherwise of the policy decision of the Commissioner of Police, Hyderabad with reference to the principles laid down by the Apex Court in various decisions referred to above and the provisions of the Hyderabad City Police Act and the Rules made thereunder.

58. The Hyderabad City Police Act has been enacted with the object of making the Hyderabad City Police an effective means for prevention and detection of crimes, maintenance of peace and investigation into circumstances. Under Clause (g) of Section 3 of the Act, "public place of amusement" has been defined to mean every place or house or tent or enclosure or booth or any other building whether permanent or temporary where singing, music, dancing or any diversion or game and thing giving amusement or the means of carrying on the same is provided and to which the public are admitted on payment and such places shall include the race course, circus, theatre, music and dancing hall, billiard room, gymnasium or any other place allotted for such purpose. Therefore, the Act has recognised the conduct of music, singing and dancing at such places as has been mentioned above. Clause (g) of Section 3 has defined "public place of entertainment" to mean any enclosed or open place to which the public have access and where any kind of articles of food and drink are supplied for consumption by person or for the profit of any person owning or having any interest in or managing such place and shall include refreshment room, tea house, liquor house, boarding house, lodging house, hotel, tavern, sendhi, wine, ganja, toddy, bhung, or opium shops. Under Clause (i) of Section 3 "public place" includes the place within the premises or enclosure of any public building or monuments and all places to which the public have access for drawing water, washing or bathing or for the purpose of recreation.

59. Section 21(1) of the Act empowers the Police Commissioner to make rules not inconsistent with the provisions of the Act for regulation of traffic and for preservation of order in relation to Clauses (a) to (h) mentioned thereunder. Under Clause (f) the Commissioner with the assent of the Government may make rules in regard to licensing for or regulating the matters viz., (i) the keeping of a place of public amusement or place public entertainment, (ii) the playing of music in public streets or public places, (ii-a) the using of a loudspeaker in any public place or places of public entertainment and where it is likely to cause inconvenience, delay, danger, or damage to the residents or the persons passing in the vicinity prohibiting the aforesaid matters. Under Clause (g) the Commissioner can make rules regulating the entrance or exit at any place or public amusement or place of public entertainment or at any meeting or public assembly and providing for the maintenance of public peace

and the prevention of disturbance at such places. Under Clause (gg), the Commissioner may also frame rules regulating or prohibiting the sale of any ticket or pass for admission, by whatever named called, to a place of public amusement. Under Clause (h), the Commissioner may make rules in regard to matters where licence or certificate is required to be obtained under the Act prescribing the procedure for obtaining it and fixing the fees for any such licence and certificate. The second proviso to Sub-section (1) of Section 21 provides that a rule made under Clause (g) shall not contain any condition requiring a licence for a place of public amusement unless liquor, sendhi or any intoxicating drug as defined in the law for the time being in force is sold in such places or unless such place is kept open for customers between 9 p.m., and 5 a.m. From this proviso it is clear that a rule made under Clause (g) shall not contain any condition, requiring licence for a place of public amusement unless liquor, sendhi or any intoxicating drug as defined in the law for the time being in force sold in such place of public amusement or unless amusement place is kept open for is customers between 9 p.m. and 5 a.m. Therefore, a licence may not be required for a place of public amusement if no liquor, sendhi or any intoxicating drug is sold therein or where the said place is not kept open for customers between 9 p.m. and 5 a.m. It is also clear from the said proviso that in a place where liquor or any intoxicating drug is sold, it can be a place of amusement also provided a licence is obtained in accordance with the rules. Under Sub-section (3) of Section 21, notwithstanding the provisions contained in Section 21 or in any rules made thereunder, it shall always be lawful for the Commissioner of City Police, Hyderabad to refuse a licence for or to prohibit the establishment of a place of public amusement or a place of public entertainment by a notorious scoundrel or a bad character.

60. Section 25 gives powers to the police to prevent disorder at public places of amusement Sub-section (2) of Section 84 of the Act empowers the Police Commissioner to suspend or revoke a licence granted under the Act if the licensee infringes, or evades compliance with the conditions of the licence.

61. As already noticed, Rule 2 of the Amusement Rules 1351-F classified the places of public amusement into Class A and Class B. Class A consists of every theatre, circus, music hall, skating rink and such places of public amusement as may be included in the said class and notified as such by the Commissioner of Police. Class B includes every such place of public amusement, which may be declared to be a place of public amusement within the meaning of Clause (g) of Section 3 of the Act. A careful scrutiny of Clause (g) of Section 3, Clause (g) of Sub-section (1) of Section 21 read with the proviso thereunder, it is clear selling of liquor at the place of public amusement is not prohibited provided licence for the same is obtained in accordance with law. Therefore, it would be difficult to conclude that a restaurant cannot be a place of public amusement under the provisions of the Act and the Rules. It is true that restaurants are meant primarily for providing food for consideration and not for amusement, but amusement is provided by way of entertainment only to provide some diversion

to the guests in the restaurant or hotel. The Act and the Rules herein do not give any impression that a restaurant cannot be a place of amusement.

62. Chapter II of the Rules deal with preliminaries for obtaining licences for premises relating to places of public amusement of Class A which include issuance of certificates by the Commissioner of Police, approval of plan by the Municipal Commissioner, certificate from the Chief Electrical Engineer. Chapter XI deals with issue of licences for places of Class A. Under Rule 96 obtaining of licence from the Commissioner of Police is compulsory. Rule 97(1) provides that the licensing authority being satisfied that other points of the rules have been fulfilled, shall issue a licence. Rule 99 provides for temporary renewal of licences. Under Rule 104(1) the Commissioner of Police shall have the discretionary power to refuse to grant licence to hold the proposed public amusement place provided its holding is likely to cause the inhabitants of the locality or cause thoroughfares or surroundings of such area hindrance, harm, trouble, danger or loss. Rule 104(2) provides that the Commissioner of Police shall have the discretionary power to suspend or cancel any licence issued under the rules or give order to the licensees to close such area temporarily or permanently or take such action as to check the hindrance, trouble, danger or loss to the inhabitants of the locality or the thoroughfares of the surroundings of such area. Rule 105 provides that no person whose licence has been issued under the rules shall neither keep, sell liquor or other intoxicating things, which have been defined in the Excise Act or opium or such other things nor permit them to be used without obtaining permission from the competent authorities. Rule 106 provides that no person who has been granted a licence for such premises shall be authorised without obtaining a licence in Form (c) annexed to the rules to permit a public display of any show or performance of a drama or dance or holding of any performance or exhibition in such premises. Rule 108 says that no person shall be authorised to hold public demonstration of any drama or music and dance party or exhibition at such area without obtaining a licence and no person, before licence has been issued shall hold any such demonstration or exhibition etc., at any such place which is not permitted by the Commissioner of Police. Under Rule 112 the Commissioner of Police has power to refuse licence if in his opinion the dramas or demonstrations are obscene or immoral, adverse or comprised of undesirable persons, revolting or causing political unrest etc.

63. Chapter XII deals with places of Public Places - Class (B) as defined in para (g) of Section 3 of the Act and not included in Class (A). Rule 125 says that no person shall be authorised to establish such area without obtaining a licence from the Commissioner of Police. Rule 126 provides that it shall be binding upon every such person who applies for establishing such area to convince/satisfy the Commissioner of Police with regard to (1) whether the situation of the proposed area is suitable, (2) whether such area is suitable for the purpose for which it is required to be used and (3) whether in such area conveyance are sufficient and if such area is situated in any building, tent or other construction, house or room, the precautionary measures against fire and sources of air are sufficient and

suitable. Under Rule 129 a place or public amusement shall not be kept open after 12.00 in the night or open before 5.00 a.m. without obtaining the written permission of the Commissioner or Police. Rule 130 provides that no person whose licence has been issued under Chapter XII shall be authorised to keep or sell or permit to be sold liquor or any intoxicating articles, as defined in the Excise Act or opium or other articles of such kind in such area, without permission of the competent authorities. Under Rule 136(1) the Commissioner of Police shall have the power to refuse licence for establishing any proposed area, provided there is likelihood of causing damage, danger or loss to the inhabitants of the locality or the thoroughfares of the surroundings. Under Rule 136(2) the Commissioner of Police shall have the discretionary power to suspend or cancel any licence given under the rules or under the licence to close such area permanently or temporarily or take such action as to check the hindrance, trouble, danger or loss of the inhabitants of the locality or the thoroughfares of the surroundings of such area.

64. The above provisions of the Act and the Rules made thereunder would show that it is not the intention of the Government to prohibit music, singing and dances in a hotel and restaurant premises and provisions have been made by way of licensing and for regulating the business in public place of amusement. Neither the Act nor the rules empower the Commissioner of Police to completely prohibit conduct of singing, music and dance programmes in the public places of amusement in the interest of general public. Playing of music and singing of songs or performance of dance would cause no harm to the general public nor it is injurious to health, safety and health of the general public and the same is not prohibited. The various provisions would only show that a regulatory mechanism has been made in the rules for grant of licences, suspension or revocation of the same in cases of violations of conditions of licence. Under Rule 112 of the Rules, the Commissioner of Police has been authorised to refuse grant of licence if in his opinion they are obscene or immoral etc. The power of the State to impose reasonable restrictions in respect of any profession or business or for that matter to I impose a total prohibition or to regulate the same is not in dispute. But, whether total prohibition of conduct of music, singing and I dances on the ground of obscenity or indecency would be justified is the question that arises for consideration in these matters. It may be that some of the licensees might have violated the licence conditions and are indulging in conduct of dances in vulgarity and cases might have also been booked against them for violation of the conditions of licence. Merely because some of the licensees have violated the conditions of licence or there was opposition by some people can a total prohibition be imposed prohibiting the music and singing and dances when the Statute has not allowed such prohibition? In our considered opinion, the same would amount to negating the fundamental right guaranteed under Article 19(1) (g) of persons who are interested in applying for amusement licences. The right of such persons cannot be deprived merely because others who have been issued licences have violated the conditions of amusement licence or because of

sentiments of some section of the public. Therefore, the policy decision taken by the Commissioner of Police prohibiting total prohibition of conduct of music, singing and dances in bars and restaurants, in our opinion, would amount to unreasonable restriction. Any restriction the State wants to bring in must be a reasonable one within the meaning of Article 19(6) of the Constitution of India. In *Chintamanrao v. State of M.P.*, (supra) it was held that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interest of the public. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Article 19(1)(g) and the social control permitted by Clause (6) of Article 19, it must be held to be wanting in that quality. Herein no care has been taken to strike a balance between the freedom guaranteed in Article 19(1)(g) and the so-called general public interest and a total prohibition is sought to be imposed under the guise of obscenity or vulgarity in the performance of dances.

65. If the licensees are violating the conditions and organising semi-nude dances or indulging in other activities encouraging the women dancers to expose their bodies in vulgar, obscene and indecent manner, the Commissioner is not without power and he can regulate the same in accordance with the provisions of law including cancellation of licence for such activity. Under Sub-section (3) of Section 21 of the Act, it shall always be lawful for the Commissioner of City Police, to refuse licence for or to prohibit the establishment of a place of public amusement or a place of public entertainment by a notorious scoundrel or a bad character. As long as the performance by male and female artists is within the limitations and there is no obscenity or vulgarity in the performance, the same cannot be prohibited nor any restriction can be imposed. Further, if the provisions of the Act and the rules made thereunder are not sufficient to meet the violations of conditions of licence perpetrated by the licensees from time to time, it is open to the Commissioner to frame a scheme in exercise of the powers u/s 21 of the Act providing guidelines for running the bars and restaurants and providing stringent punitive measures. Further, it is not in dispute that permissions were given to number of restaurants in the city and such restaurants/ hotels are conducting music, singing and dance programmes. Therefore, the action of the respondents in denying grant of such permissions to others under the guise of a policy would be arbitrary and discriminatory. The State cannot completely prohibit the trade altogether even though it is not inherently vicious or pernicious.

66. In *Mohammed Faruk Vs. State of Madhya Pradesh and Others*, , the Apex Court held that prohibition imposed on the exercise of fundamental right to carry on an occupation, trade or business will not be regarded as reasonable, if it is imposed not in the interest of the genial public but merely to respect the susceptibilities and sentiments of a section of the people whose way of life, belief or thought is not the same as that of the claimant.

67. We are in agreement with the view taken by the Division Bench of this Court in *Government of A.P. v. Sri Baldev Sondli (supra)*, wherein it was held:

Merely because a section of the public is opposed to a particular business, or is of the view that it is inimical to public welfare, it does not follow that the restriction imposed by the State is in the interest of the general public. The State has the power not only to regulate a business by imposing reasonable restrictions in the interest of the general public but can also prohibit a business altogether if, in its opinion, it is inimical to the public welfare or dangerous to the community or subversive of its morals. Merely because reprehensible practices may be adopted in carrying on a lawful business and the suppression of such practices is in the public interest, it affords no adequate justification for the State to destroy one's right to carry on business guaranteed by the Constitution. What is a reasonable restriction must be decided by the Court by looking into the circumstances and the manner in which the restriction imposed, the nature of the right alleged to have been infringed, the underlying purpose of the restriction imposed, the extent and the urgency of the evil sought to be remedied thereby, the disproportion of the imposition and the prevailing conditions. If a total ban is imposed on any business by prohibiting it altogether, the burden of proving that such a restriction is reasonable is upon the State and it should be established that the admitted evil cannot be prevented except by prohibiting it.

Dealing with the expressions "dance" and "cabaret dance", this Court held:

Dance has been considered to be the highest form of art. "Cabaret dance" is one form of dance. The meaning of the word "cabaret", as pointed out in *Corpus Juris Secundum* (Volume XII) at page 874, shows that it is a clearly understood term, denoting something more in the way of entertainment than the mere service of food in the manner and with the accessories customary and expected by the patrons of a large resort hotel, such as attractive and agreeable surroundings and music by an orchestra, and it implies the hiring of professional dancers or actors and as a part of the musical entertainment, soloists either instrumental or vocal.

The expression "dance" "cabaret dance", as understood in common parlance in the above sense, are neither per se immoral, indecent, nor obscene. All kinds of dance or cabaret dance cannot, therefore, altogether prohibited, unless such prohibition is imposed by a Statute in the interest of general public.

68. Dealing with Rule 112(1) of the Rules relating to places of public amusement in the City of Hyderabad, 1351-Fasli framed by the Commissioner of Police in exercise of his powers conferred u/s 21 of the Hyderabad City Police Act, 1348-Fasli, it was held:

Not only on the grounds mentioned in Clauses (a) to (e) of Rule 112(1) of the rules, but also on any ground other than those specified in the preceding clauses, which is objectionable, the Commissioner of Police can refuse licence; but, that ground must be proximately related to, or have a rational nexus with the objects

for which the Hyderabad City Police Act is passed i.e., the maintenance of peace and prevention of the crimes. It cannot be said that the reason "in public interest" can under no circumstances come within Clause (f) of Rule 132(1) of the rules, or covered by the words "objectionable for any other reason". But, if the words in Clause (f) of Rule 112(1) include "in public interest", then, the latter expression "in public interest" would be wide, vague and unintelligible, and confer an arbitrary, unbridled and unguided power on the Commissioner of Police and would amount to an unreasonable restriction on the right to carry on business and hence constitutionally invalid.

If for the reason "in public interest" licence can be refused, those words are vague and no guidelines have been provided anywhere, either in the Act or the rules, as to what is or what is not in public interest. In the absence of such guidelines, the Commissioner of Police could not refuse licence on such a wide or vague ground without mentioning in the impugned orders, the circumstances or material on which the Commissioner of Police is of the opinion that it is in the interest of the general public not to issue licences to the respondents.

Before forming an opinion that it is in the interest of the general public not to issue licences to the respondents, the Commissioner of Police should have, before him, materials and circumstances, which justify his opinion. Not only such material he must have before him for forming an opinion that it is in the interest of the general public to refuse licences to the respondents, but those materials and circumstances must also find a place in the orders refusing to issue licences.

69. We find no reason to disagree with the above observations of this Court. As rightly observed by this Court no guidelines have been provided either in the Act or the Rules to impose total prohibition for grant of amusement licences in general public interest.

70. The policy decision of the respondents would be unreasonable and cannot be sustained for yet another reason. By reason of the impugned policy decision not to grant any amusement licences to any bars and restaurants in the State other than four star and five star hotels, an unreasonable classification has been made between the two sets of categories of hotels or restaurants. There is no guarantee that the four star and five star hotels will not indulge in such activities. We are unable to comprehend what object the State would like to achieve by making such classification. The activity in both the categories of hotels/restaurants is one and the same. As rightly contended by the learned Counsel appearing for the petitioners the classification made by the respondents between four star and five star hotels as one group and the other star hotels and other restaurants as other group is not a reasonable classification as in both the cases the permission relate to only music, singing and dancing. The action of the respondents, in our considered opinion, would amount to selective discrimination offending the provisions of Article 14 of the Constitution of India. The classification is not founded on an intelligible differentia and there is no rational relation to the object sought to be achieved by the policy decision under

challenge. As already indicated above, there is no guarantee that the four star and five star hotels will not indulge in prohibited activities. Further, neither the Act nor the Rules framed thereunder allow such classification between the same set of persons.

71. Further, it is not in dispute that several bars and restaurants whose names are tabulated in the affidavit filed in support of W.P.No. 14425 of 2002 have been granted licences and they are running the business. The right to trade business, in our view, can be restricted only in the event if it is not done in accordance with the provisions of Constitution of India. Further, the City Police Act is equally applicable to all the hotels, bars and restaurants in the twin cities. But the Commissioner of Police granted amusement licences in respect of some bars and restaurants and rejected the applications of others like the petitioners herein without any valid reason. Therefore, it is a clear discriminatory action on the part of the Commissioner of Police, which is violative of the principles of natural justice. Likewise stopping of granting licences of amusement to all hotels, bars and restaurants except the hotels, which are classified as Four Star and Five star, is also equally discriminatory.

72. The total prohibition underlined by the policy decision is arbitrary and illegal for another reason also. As has been held by the Supreme Court in *Chintamanrao v. State of M.P.* and *Khoday Distilleries Ltd. v. State of Karnataka* (supra) only those professions which are inherently vicious or obnoxious or injurious to health, safety and welfare of general public can be prohibited completely because the right to practise profession or to carry on any occupation does not extend to such inherently vicious and pernicious trade or business. By no stretch of imagination, it can be said that the trade or business in music, dance and singing is inherently vicious and pernicious warranting a total prohibition in the interest of general public. Such a restriction is an unreasonable restriction. Singing, music and dancing come under the category of amusement or entertainment. The activity of obscenity or indecency being indulged in such performances can always be remedied by appropriate subordinate legislation or by an executive order.

73. As noticed earlier, there is no provision in the Act empowering the Commissioner to impose prohibition nor there was any executive order issued by the Governor of the State imposing such prohibition justifying prohibition of music and singing programmes in the bars and restaurants in the interest of general public and on valid grounds. In the absence of the same, it would be difficult to endorse the alleged policy decision taken by the Commissioner of Police not to grant or renew any amusement licences to the bars and restaurants to hold music and singing programmes from 25.2.2002. In our considered opinion a blanket prohibition to grant amusement licences cannot be ordered in respect of all applicants on the ground that some persons have been violating the conditions of licence and indulging in reprehensible practices in the activities. Such a total prohibition would amount to infringement of the fundamental right

guaranteed to a citizen under Article 19(1)(g) who is interested in the said business.

74. Some of the grounds mentioned in the impugned orders rejecting the grant of amusement licences are that there is no provision for parking of the vehicles and there are no fire extinguishers and there is no scope for the visitors to escape in case any calamity occurs. The Commissioner of Police ought not to have rejected the applications of the petitioners on such flimsy grounds. If there are any defects in the places of amusement, an opportunity should have been given to the applicants to rectify those defects. As rightly contended by the learned Counsel appearing for the parties, the activity in music, dance and singing will not add to noise pollution as such activities are always conducted in closed doors and in air conditioned rooms and there is no likelihood of causing damage, danger or inconvenience to inhabitants of the locality or the thoroughfares of the surroundings. If there are any defects as regards making provision for parking space for scooters and cars or where there is lapse on the part of the applicants in providing equipment of first aid fire fighting arrangements or any other lapse to contain noise pollution, the Commissioner of Police would always be at liberty to insist on the applicants to comply with the same before they are granted amusement licences. But, on those grounds, he cannot refuse to grant licences permanently. .

75. We are of the opinion that the Hyderabad Secunderabad (Amusement) Rules, 1995 issued in exercise of the powers conferred by Clause (gg) of Sub-section (1) of Section 21 of the Act have no application to the grant of amusement licences. Rules 1351-Fasli clearly provide the procedure for grant of amusement licences. Rule 3 of the Rules, 1995 merely mention that no person or an organisation or a society whether registered or unregistered shall without a licence obtained from the Licensing Authority establish or run public amusement at a public place. There is no procedure provided for grant of licence thereunder. Obviously the licence referred to in Rule 3 of the aforesaid rules must be an amusement licence contemplated under the Rules 1351 Fasli. This is more so because Clause (gg) of Sub-section (1) of Section 21 of the Act in exercise of which the said rules have been issued only refer to "regulating or prohibiting the sale of any ticket or pass for admission, by whatever name called, to a place of public amusement". Therefore, the scope of the rules shall be limited to such source of power only and does not extend to grant of amusement licences. The grant of amusement licences is referable only to Rules 1351 Fasli. The object of issuing the Rules 1995 is only to regulate the admission into a place of public amusement by tickets or by passes to be sold at such reasonable rates as the licensing authority may fix which is reflected in Rule 4. When the Rules 1351 already provide for a detailed procedure for grant of amusement licence, there is no need to provide any provision again for grant of public amusement licence under rules 1995. The Rules, 1995 does not relate to regulation of public amusement. In this view of the matter, under rule 5 of the Rules 1995 an appeal to the Government would lie only in cases where persons feel aggrieved against

the rates of tickets fixed by the licensing authority i.e., where the rates of tickets are considered to be on higher side. The rules shall not be contrary to the intent of the Act. Section 21 of the Act clearly states that the Rules issued in exercise of the power under the said section shall not be inconsistent with the provisions of the Act. Therefore, in our considered opinion, no appeal would lie against the order of the Commissioner of Police rejecting the grant of amusement licence.

76. As regards W.P.No. 10195 of 2002 is concerned, in the counter it is stated that the enquiries revealed that the place where the restaurant is located is not a fit place to be considered for grant of licence as number of residential houses are located around it. Though the petitioner has placed reliance on G.O.Ms.No. 156 dated 5.7.2001, the said G.O. has not been placed on record. Only the annexure appended thereto is placed as material paper. Category V in the said annexure provides for Band Music and dance in hotels/restaurants. The case of the respondent is that certain prerequisites are to be satisfied before grant of licence and the place where the restaurant is located is not a fit place to be considered for grant of licence and in and around number of residential houses are located and there is every likelihood of breach of peace and tranquility in the area. It is also the case of the respondent that the area is predominantly inhabited by 400 small and large scale industries and always there will be flow of work force round the clock and hence the area is not a fit place to be considered for grant of licence. The opinion expressed by the respondent who is ultimately responsible for the law and order situation in the area cannot be brushed aside. There is no fundamental right of a citizen to carry on business wherever he chooses. (See *Pyare Lal etc. Vs. New Delhi Municipal Committee and Another*, , and *IB. Ibrahim v. RTA, Tanjore (supra)*). Therefore, it is for the petitioner to show that the restaurant is placed in a fit place and is entitled to be granted licence in accordance with G.O. Ms. No. 156. It is not for this Court to examine whether the restaurant/hotel is placed in a fit place or not. It is open to the petitioner to demonstrate before the Superintendent of Police that the restaurant is situated in a fit place and he is entitled to be granted amusement licence or choose some other place.

77. For the reasons aforesaid, the impugned orders in the respective writ petitions except in W.P.No. 10195 of 2002 cannot be sustained and they are set aside accordingly. The petitioners including the petitioner in W.P.No. 10395 of 2002 are at liberty to make fresh applications for grant of amusement licences after duly rectifying the defects pointed out by the Commissioner of Police in the impugned orders and thereafter the Commissioner shall consider the said applications on an objective assessment of the facts and circumstances obtaining in each case and in accordance with law. It is open to the Commissioner of Police or the State Government to regulate the activities in the Bars and Restaurants by adopting such stringent punitive measures as may be necessary, in addition to the regulatory procedure already provided under the rules, if necessary, by taking recourse to the source of power u/s 21 of the Act, to contain any obscenity, vulgarity or indecency in the performances to be made in the Bars or

Restaurants/hotels and as also to the strict adherence to the timings and such other measures that may be necessary in the interest of general public.

78. In the result, all the writ petitions are allowed except W.P. No. 10195 of 2002, which is disposed of in the light of the observations made above. There shall be no order as to costs.