
(2003) 09 AP CK 0050
In the Andhra Pradesh High Court
Case No : WA No. 822 of 2003

Chandini Bar and Restaurant

APPELLANT

Vs

Commissioner of Police and Another

RESPONDENT

Date of Decision : 10-09-2003

Acts Referred:

Hyderabad City Police Act, 1348 — Section 21
Hyderabad City Police Rules, 1351 — Rule 136

Citation : (2003) 6 ALD 299 : (2003) 5 ALT 705 : (2003) 3 APLJ 197

Hon'ble Judges : M. Narayana Reddy, J;B. Sudershan Reddy, J

Bench : Division Bench

Advocate : C. Nageswar Rao, for the Appellant; Government Pleader for Home, for the Respondent

Final Decision : Dismissed

Judgement

B. Sudershan Reddy, J.—The unsuccessful petitioner in W.P. No. 5420 of 2003 is the appellant in this appeal filed against the order dated 2nd April, 2003 made in the said writ petition by a learned Single Judge, of this Court whereunder the learned Judge dismissed the said writ petition and accordingly upheld the impugned order dated 17-3-2003 passed by the first respondent-Commissioner of Police, Hyderabad City, rejecting the application of the appellant herein for grant of amusement licence to hold music and singing in its premises known as "M/s. Chandini Bar and Restaurant".

Factual Matrix:

2. The Commissioner of Police, Hyderabad City in exercise of the powers conferred upon him under the provisions of the Hyderabad City Police Act, 1348 Fasli (for short "the Police Act") and the rules framed thereunder granted amusement licence to the appellant herein for conducting Indian music and songs programmes only in its premises styled as "M/s. Chandini Bar and Restaurant", situated at Ameerpet, Hyderabad for the year 2002 i.e., up to 31-12-2002 on condition that the licensee shall not indulge in any unlawful

activities and shall abide by the other conditions mentioned in the licence. The appellant-restaurant by its application dated 19-12-2002 sought for renewal of amusement licence for the year 2003. The first respondent-Commissioner of Police by order dated 16-1-2003 rejected the said application for renewal of amusement licence on the ground that there is no adequate space for parking and the residents of the locality have complained of heavy sound pollution and disturbance causing mental unrest resulting in grave prejudice to the health and tranquillity.

3. The appellant herein assailed the said order dated 16-1-2003 in W.P. No. 2649 of 2003 and this Court by its order dated 7-3-2002 allowed the said writ petition and accordingly quashed the order dated 16-1-2003 of the first respondent-Commissioner of Police. The Court further directed the Commissioner of Police to consider the request of the appellant for renewal of amusement licence in accordance with law and not to reject the same on the ground of inadequate parking space.

4. The appellant herein submitted a detailed report along with the order passed by this Court in W.P. No. 2649 of 2003 referred to hereinabove on 16-3-2003. The first respondent-Commissioner of Police after providing an opportunity of being heard and having considered the representation of the appellant herein rejected the same by his order dated 17-3-2003. The same has been challenged by the appellant herein once again in W.P.No. 5420 of 2003. The learned Single Judge after an elaborate consideration of the matter upheld the order passed by the first respondent-Commissioner of Police and accordingly dismissed the said writ petition. Hence the present writ appeal.

Submissions:

5. In this writ appeal, Sri C. Nageshwara Rao, learned Counsel for the appellant, contended that the first respondent-Commissioner of Police has formulated a policy for himself not to grant renewal of amusement licence and accordingly rejected the request of the appellant which cannot be countenanced by this Court. The licensing authority is not competent to reject the application for renewal of amusement licence on the ground that the local residents raised objection for grant of the same, which is not one of the relevant considerations to be taken into account by the licensing authority under the provisions of the Police Act and the rules framed thereunder. It was also submitted that the licensing authority had rejected the application of the appellant herein on mechanical grounds without application of mind. It was also submitted that the Bar and Restaurant licence had already been granted by the second respondent herein under the provisions of the Andhra Pradesh Excise Act, 1968 by duly taking into consideration the area in which the restaurant is placed and its suitability for running a Bar and Restaurant and the first respondent-Commissioner of Police once again cannot take the very factors into consideration and come to a different conclusion for rejecting the application of the appellant for grant/ renewal of amusement licence.

6. The learned Government Pleader for Home contended that the first respondent-Commissioner of Police is not bound by the licence, if any, granted by the excise authorities for running a Bar and Restaurant by the appellant herein. The factors that are required to be taken into consideration by the first respondent-Commissioner of Police are specified by the provisions of the Police Act and the rules framed thereunder. The power exercised by the first respondent-Commissioner of Police in the instant case is not vitiated for any reason whatsoever. The action of the first respondent-Commissioner of Police in rejecting the application of the appellant herein for grant of amusement licence is perfectly in accordance with the provisions of the Police Act and the rules framed thereunder. Public interest is paramount consideration in considering the application either for grant or renewal of licence under the provisions of the Police Act and the rules framed thereunder.

7. In order to appreciate the controversy, it would be apposite to notice the relevant portion of the impugned order passed by the first respondent-Commissioner of Police:

".....As directed by the Honourable High Court in its order dated 7-3-2003 in W.P. No. 2649 of 2003, I heard Shri Gurdeep Singh in respect of the representation given to me on 11-1-2003 by 40 residents of the locality complaining about the nuisance being created by the sound produced by the singing and music/orchestra organised in "Chandini Bar and Restaurant". Except saying that he needs the extra income generated by the increase in customers due to singing and music to repay the various loans he obtained from Banks etc. Shri Gurdeep Singh did not deny the existence of nuisance to the residents of the locality due to singing and music in his bar and restaurant.

There is no doubt whatsoever, that the nuisance being experienced by the residents of the locality is genuine, real and painful to all those who actually experience it. It cannot be brushed aside as either imaginary or unreal because as many as 40 local residents gave a written representation, whose contents were personally enquired into by me.

As a Commissioner of Police, I am now saddled with the responsibility of either rejecting the Amusement licence sought by M/s. Chandini Bar and Restaurant, thereby giving peace, tranquillity and sound sleep to the residents of that locality; or grant Amusement licence sought, thereby making Shri Gurdeep Singh and his partners financially very sound, but cause serious inconvenience to the residents of the locality.

As a public servant, I will be failing in my duty if I give more importance to "private interest" vis-a-vis "Public Interest". 30 years of my service as a public service makes me believe that "private interest" should be sacrificed at the altar of "public interest".

I am, therefore compelled to reject the amusement licence sought by M/s. Chandini Bar and Restaurant, but with the satisfaction that I have ensured that

the residents of the entire locality are saved of a major nuisance, are allowed to sleep in peace and their children prepare well for their examinations.

Consequently, the application for grant of amusement licence to hold music, and singing is considered and rejected."

The Commissioner of Police in exercise of the power conferred upon him under Clauses (f), (g) and (h) of Sub-section (1) of Section 21 of the Hyderabad City Police Act, 1348 Fasli promulgated the rules with the assent of H.E.H. the Nizam's Government known as "the Rules relating to places of public entertainment in the City of Hyderabad, 1351 Fasli (for short "the Rules").

8. Section 21 of the Police Act enables the Commissioner of City Police, Hyderabad to make rules not inconsistent with the Act and it reads:

21. Power to make rules for regulation of traffic and for preservation of order :--
The Commissioner of City Police, Hyderabad may, from time to time, make rules not inconsistent with this Act in respect of the following. Such rules shall, in cases of clauses (b) and (c), be subject to the control of the Government and with regard to be remaining clauses, sanction of the Government shall be obtained prior to the enforcement of rules.

(a)-(e).....

(f) 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 public 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 gunpowder or other explosive substances,

(v) blasting,

(g) 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;

(gg).....

(h).....

Provided firstly.....

Provided secondly 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.

(2).....

(3).....

"Public place of amusement" is defined in Section 3(g) of the Police Act, which is to the following effect:

"public place of amusement" means 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 any thing 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" is also defined in Section 3 (h) of the Police Act, which reads;

"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 owing 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".

9. Now it may be noted that Rule 104 of the Rules confers discretionary power upon the Commissioner of Police to refuse grant licence to hold the proposed public amusement place, provided; its holding is likely to cause the inhabitants of the locality or cause the thoroughfares of surroundings of such area, "hindrance, harm, trouble, danger or loss ".

10. Rule 136 of the same Rules confers power upon the Commissioner of Police 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. The Commissioner of Police is also clothed with the discretionary power even to suspend or cancel any licence that has been granted under the Rules and direct the closure of such area permanently or temporary 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 areas. The Rule reads:

136. Powers of the Commissioner of Police with regard to non-issue, suspension and cancellation of the licence :--(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.

(2) The Commissioner of Police shall have the discretionary power to suspend or cancel any licence given under these Rules or under the licence to close such area permanently or temporary 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 areas.

11. The above provisions of the Police Act and the Rules made thereunder would show the nature and extent of the powers conferred upon the Commissioner of Police. That grant of licence or refusal thereof is not a matter of formality. It is true that the discretion conferred upon the Commissioner is required to be exercised carefully and in accordance with the Police Act and the Rules referred to hereinabove. There is nothing like unlimited power conferred upon the Commissioner of Police either to grant or refuse the amusement licence, but at the same time, we wish to clarify that no absolute right as such is conferred upon any applicant to apply for and obtain the amusement licence under the provisions of the Police Act and the Rules made thereunder.

12. One of the Rules (Rule 126) mandates that every person who applies for establishing such area is required to convince and satisfy the Commissioner of Police with regard to (a) situation of the proposed area is suitable; (b) such area is suitable for the purpose for which it shall be used; and (c) 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. In other words, these factors are required to be taken into consideration by the Commissioner of Police before granting amusement licence under the Rules.

13. In the instant case, the Commissioner of Police himself has visited the appellant's premises on 11-1-2003 and during the course of that inspection he received representation from 40 residents of the locality complaining about the nuisance being created by the sound produced by singing and music/ orchestra organised in "Chandini Bar and Restaurant". The Commissioner of Police, thereafter, by order dated 16-1-2003 rejected the request of the appellant for renewal of the amusement licence on the ground that there is no adequate space for parking and that the residents of the locality have complained of heavy sound pollution and disturbance causing mental unrest to their children. A learned Single Judge of this Court in W.P.No. 2649 of 2003 referred to hereinabove set aside the order dated 16-1-2003 passed by the Commissioner of Police refusing to grant renewal of licence and directed to reconsider the application of the applicant for renewal of amusement licence after providing an opportunity of being heard to the appellant with regard to the representation given by the

residents of the locality but not to reject the request of the appellant for renewal of amusement licence on the ground of inadequate parking place. That order has become final in between the parties. It is thus clear that the Commissioner of Police is entitled to take into consideration the representation given by the residents of the locality, but only after putting the appellant on notice about the same.

14. The only question that falls for consideration is as to whether the order dated 17-3-2003 passed by the Commissioner of Police suffers from any legal infirmities?

15. Sri C. Nageshwara Rao, learned Counsel for the appellant, placed heavy reliance upon a Division Bench judgment of this Court in *Big Way Bar and Restaurant Vs. Commissioner of Police*, in support of his submission that 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. It was contended that the Commissioner of Police cannot reject the application for renewal of amusement licence on the ground that the activity in music, dance and singing in the appellant's premises has resulted in causing damage, danger or inconvenience to the inhabitants of the locality. It is true that in the said judgment, the following observations have been made:

"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". (Empahasis is added).

16. In our considered opinion, the said observations made by this Court cannot be torn out of the context in order to contend that, under no circumstances, the Commissioner of Police is not entitled to reject the application either for grant or renewal of amusement licence even if the activity in music, dance and singing results and adds to noise pollution. The said decision is an authority for the proposition that the Commissioner of Police is not empowered to completely prohibit conduct of singing, music and dance programmes in the public places of amusement in the interest of general public as a measure of policy decision. Such a policy decision taken by the Commissioner of Police prohibiting total prohibition of conduct of music, singing and dances in bars and restaurants would amount to unreasonable restriction. Such total prohibition of conduct of music, singing and dances would amount to negating the fundamental right

guaranteed under Article 19(1)(g) of persons who are interested in applying for amusement licences. The said judgment, in our considered opinion, is not an authority for the proposition that, under no circumstances; the Commissioner of Police can reject the application for grant of amusement licence even if the activity in music, singing and dances results and adds to noise pollution.

17. It is clear from the observations made in the said judgment itself that any defects as regards making provision for parking space or lapse on the part of the applicants in providing equipment of first aid, fire fighting arrangements or any other lapse to contain noise pollution, is one of the considerations to be taken into account by the Commissioner of Police who is entitled to and had liberty to insist on the applicants to comply with the same before they are granted amusement licences. Those observations clearly imply that in case where the Commissioner is satisfied that those defects cannot be rectified and the ongoing activity in music, singing and dances had resulted in disturbing the peace and tranquillity in the surrounding areas adding to noise pollution, is always entitled to refuse to grant licences.

18. In the very same judgment, it is observed that the opinion expressed by the authorities, who are ultimately responsible for the law and order situation in the area, cannot be brushed aside.

19. 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 *T.B. Ibrahim Vs. Regional Transport Authority, Tanjore*,). The Court in clear and categorical terms declared that it is for the applicant to show that the restaurant is placed in a fit place and is entitled to be granted licence in accordance with law. It is not for this Court to examine whether the restaurant/hotel is placed in a fit place or not.

20. In the instant case, the Commissioner of Police having provided a reasonable opportunity of being heard to the appellant herein and having reconsidered the representation of the appellant found that "there is no doubt whatsoever that the nuisance being experienced by the residents of the locality is genuine, real and painful to all those who actually experience it".

21. The learned Counsel for the appellant made an attempt to rely upon some affidavits stated to be from the neighbours that they have no objection for renewal of amusement licence to the appellant herein. We cannot make any enquiry into the truth or otherwise or genuineness of those affidavits and record any finding thereof. We do not find any particular reason or justification to disturb the findings recorded by the Commissioner of Police that the activities of singing and music/orchestra organised in "Chandini Bar and Restaurant" had resulted in causing nuisance. The Commissioner of Police noted that the appellant herein did not deny the existence of nuisance to the residents of the locality due to music, singing and dancing in the bar and restaurant. All that the appellant stated before the Commissioner is that he needs generation of extra

income to repay the various loans obtained by him from various banks and financial institutions and such extra income is possible only by arranging singing and music programmes thereby attracting more and more customers.

22. We have already noticed that Rule 136 of the Rules enables the Commissioner of Police to refuse to grant licence for establishing any proposed area, provided there is likelihood of causing damage, danger or loss to the inhabitants of the locality. The expressions "damage", "danger", or "loss" to the inhabitants of the locality are very wide in their content. Such damage may include the damage caused to the health of the inhabitants of the locality on account of sound pollution. The expression "damage" means:

"Loss, injury, or deterioration, caused by the negligence, design, or accident of one person to another, in respect of the latter's person or property. The word is to be distinguished from its plural, "damages", which means a compensation in money for a loss or damage. An injury produces a right in them who have suffered any damage by it to demand reparation of such damage from the authors of the injury. By damage we understand every loss or diminution of what is a man's own, occasioned by the fault of another. The harm, detriment, or loss sustained by reason of an injury. (Black's Law Dictionary, Sixth Edition)"

"By a damage we understand every loss or diminution of what is a man's own, occasioned by the fault of another. The definition of damage extends the notion of it beyond a man's goods. His life, his limbs, his liberty, an exemption from pain, his character or reputation, are all of them his own in a strict and proper sense; so that the loss or diminution of any of them gives him a right to demand reparation from those by whose fault they have been lost or diminished." (P. Ramanatha Aiyar's The Law Lexicon - 1997 Edition).

The expression "danger" means:

"Danger means risk, hazard, peril or exposure to pain or injury and the degree of danger is proportional to the time required for the oncoming of the apprehended injury. The different degrees of danger do not justify the same remedy but the remedy should also be different. 33 B 334 : 10 Bom.LR 821 : 3 I.C. 361. It means "jeopardy," "exposure to loss or injury". Danger means peril, risk, hazard, exposure to injury from pain or other evil and can vary in degree according as the apprehended injury is expected to occur at once or at some future time. (See also 13 PR 1906 : CrI.LJ 81 : 59 PLR 1907) (P.Ramanatha Aiyar's The Law Lexicon -1997 Edition).

23. It is no doubt true that those expressions viz., "damage", "danger" and "loss" are not employed in the impugned order passed by the Commissioner of Police. It is the substance of the order that is important and not the form in which the order has been couched. In no uncertain terms the Commissioner of Police concluded that "the nuisance being experienced by the residents of the locality is genuine, real and painful to all those who actually experience it. It cannot be brushed aside as either imaginary or unreal....." The

Commissioner of Police, in our considered opinion, exercised his discretion properly and accordingly rejected the application of the appellant herein for renewal of amusement licence on the ground that there is likelihood of causing damage, danger or loss to the inhabitants of the locality if any such licence is granted in favour of the appellant.

24. It is interesting to notice that in the affidavit filed by the appellant in support of the writ petition, it is nowhere stated that the activity of music, singing and dancing undertaken by the appellant herein did not result in any sound pollution causing damage and danger to the inhabitants of the locality. There is not even such a whisper in the affidavit filed in support of the writ petition. There is no denial of the fact that the activity undertaken by the appellant in its bar and restaurant had resulted in causing damage, danger or loss to the inhabitants of the locality. Nowhere in the affidavit, it is stated that the situation of the proposed area where the said activities are carried on is suitable for carrying on the said activities.

25. In the circumstances, the Court cannot find fault with the conclusions reached by the Commissioner of Police about the real and painful nuisance caused due to the activities undertaken by the appellant herein in organising singing and dancing in the premises.

26. Whether the discretion exercised by the Commissioner of Police is vitiated for any reason?

27. That it is so well settled that there is no such thing as absolute and untrammelled "discretion". The "discretion" necessarily implies good faith in discharging public duty; there is always a perspective within which a statute is intended to operate.

28. In *Breen v. Amalgamated Engineering Union* 1971 2 Q.B. 175, Lord Denning MR observed:

"The discretion of a statutory body is never unfettered. It is a discretion which is to be exercised according to law. That means at least this: the statutory body must be guided by relevant considerations and not by irrelevant. If its decision is influenced by extraneous considerations which it ought not to have taken into account, then the decision cannot stand. No matter that the statutory body may have acted in good faith; nevertheless the decision will be set aside. That is established by *Padfield v. Minister of Agriculture, Fisheries and Food* which is a landmark in modern administrative law."

29. It is equally well settled that the doctrine that powers must be exercised reasonably has to be reconciled with the no less important doctrine that the Court must not usurp the discretion of the public authority appointed to take the decision. "Within the bounds of legal reasonableness is the area in which the deciding authority has genuinely free discretion."

30. The Commissioner's decision, in our considered opinion, is not influenced by

any extraneous considerations and the decision taken in exercise of his discretion to reject the application of the appellant has been guided by relevant considerations and not by irrelevant.

31. It is not even the case of the appellant that the decision of the first respondent-Commissioner of Police is vitiated on account of any malice either in fact or in law.

32. For the aforesaid reasons, we do not find any merit in this appeal. The same shall accordingly stand dismissed. No order as to costs.