

(2005) 09 KAR CK 0041

In the Karnataka High Court

Case No : Writ Petition No. 16318 of 2005 C/W W.P. No's. 16193 and 16293 of 2005

Karnataka Live Band Restaurants Association and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 27-09-2005

Acts Referred:

Karnataka General Clauses Act, 1899 — Section 28
Karnataka Police Act, 1963 — Section 165, 31 (6)

Citation : (2005) ILR (Kar) 5401 : (2006) 1 KarLJ 300 : (2006) 1 KCCR 12 SN

Hon'ble Judges : K.L. Manjunath, J

Bench : Single Bench

Advocate : Ashok Haranahalli, G.K. Bhat and Prasanna Kumar, for Kumar and Kumar, for the Appellant; B.T. Parthasarathy, General and B.N. Prasad, HCGP, for the Respondent

Final Decision : Allowed

Judgement

K.L. Manjunath, J.—The petitioners in these petitions are challenging the validity of the Licensing and Controlling of places of Public Entertainment (Bangalore City) Order 2005, published in the Karnataka Special Gazette dated 24th of May, 2005 (hereinafter referred as "order" for short). The 1st petitioner is an Association of persons who are conducting live band at different places in Bangalore City. The same has been registered on 27th April 2001. The copy of the Registration Certificate is produced as Annexure-B. The 1st petitioner Association is registered under the provisions of the Karnataka Societies Registration Act, 1960. The remaining petitioners are the persons who are running the Bar and Restaurants and entertaining their customers by playing live band music. On earlier occasions, the respondents were insisting that the persons who are conducting the live band should obtain licence under the Licensing and Controlling of Public Amusement (Bangalore City) Order 2002 and the same was questioned before this Court in writ Petition No. 75/1998 and other connected Writ Petitions. The Writ Petition was allowed by a learned Single Judge

of this Court on 11.3.1998. Being aggrieved by the order of the learned Single Judge, the State preferred an appeal in Writ Appeal No. 1446-1460/1998. The Appeals of the State were allowed on 27.11.1998. Being aggrieved by the Judgment of the Division Bench, the persons who were running the live bands filed an appeal before the Hon''ble Supreme Court in CA No. 1857-58/2000, which appeals were allowed and the Judgment of the Division Bench of the High Court was set aside and thereafter the petitioners and others who are running the Bar and Restaurants are also entertaining their customers through live bands. As per Annexure-A to the W.P. No. 16318/2005 the respondent has issued an Entertainment Order 2005, to regulate the activities in conducting Cabaret, Discotheque and live bands conducted in a Bar and Restaurant.

2. The present petition is filed by the petitioners contending that Annexure-A has been issued contrary to the provisions of the Karnataka. Police Act. According to them, the present licencing order is only to control the live band. Discotheque and not to regulate the places of public entertainment. According to them, the issuance of notification as per Annexure-A by dispensing with the previous publication is only to prevent the petitioners and other persons who are affected by the notification and therefore contend that an opportunity had to be given to the petitioners to raise their objections in regard to unreasonable conditions imposed in the notification. The present petition is filed to quash the Licensing and Controlling of Places of Public Entertainment (Bangalore City) Order 2005 as ultra virus and unconstitutional and arbitrary.

3. The State has filed its counter.

4. According to the respondents, the present order has brought into force forthwith by dispensing with the previous publication, considering the provisio to Section 31(6) of the Karnataka Police Act. The Commissioner after satisfying himself that there were circumstances which render it necessary to bring the order into force at once without previous publication of the order with the previous sanction of the Government. According to them, the present order has been brought into force forthwith considering the safety of the visitors visiting the places of entertainment, inconvenience caused to the public and to prevent the crime rate and illegal activities and also to consider the existence of various education and religious institutions in and around these Live Bands, Bar and Restaurants.

5. It is also the case of the respondents that solely on that ground of previous publication is not made the Licensing order cannot be termed as ultra vires or unconstitutional or arbitrary. To support their contentions they relied upon Section 165 of the Karnataka Police Act.

6. After completion of the pleadings, the previous Police Commissioner of Bangalore City has also filed an affidavit to support his action to show that certain circumstances were in existence to bring about the order forthwith by dispensing with the previous publication. The affidavit discloses that the State of

Maharashtra decided to close the dance bars in Maharashtra State and there was a credible information that the girls employed in dance bars in Maharashtra may influx into Bangalore to be employed in live bands in Bangalore and after discussing the matter with the Commissioner of Police, Bombay, he was satisfied that the Bombay girls may influx into Bangalore and many articles were also published in the media in regard to influx of girls from Bombay and on the information received, exercising the proviso to Section 31(6) of the Karnataka Police Act, the Licensing Order in question was given effect to by dispensing with the notice as required under the law. Therefore, respondents request the Court to dismiss the Writ Petitions.

7. I have heard Sri. Ashok Haranahalli, Sri G.K. Bhat and Sri. Prasanna Kumar, the learned Counsel appearing for the parties in different Writ Petitions. I have also heard the learned Advocate General for the State.

8. The learned Counsel appearing for the petitioners contend that the notification is silent in regard to dispensation of prior publication and that there were no material available on record to show that the dance girls of Bombay would influx to the Bangalore City. According to them, the affidavit filed in support of the counter by the Commissioner of Police is an after thought and that no relevance can be attached to the affidavit filed by the Commissioner of Police, since the records do not disclose that the Commissioner was satisfied with the conditions to dispense with the previous publication. To support their case, they mainly rely upon the Judgment of the Honourable Supreme Court in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, *Barium Chemicals Ltd v. Company Law Board* 1967 SC 295 and *The Municipal Corporation Bhopal, M.P. Vs. Misbahul Hasan and Others*, . According to them, under the guise of the regulation, virtually the respondents have banned the live band show in an arbitrary manner and therefore they contend that no circumstances were in existence to dispense with the previous publication of the draft rules. Relying upon the conditions of the licencing order they contend that it is possible for any person to satisfy the conditions laid down in the order in order to secure a licence. Therefore, they contend it is impossible for any person to run a live band in Bangalore.

9. Per contra, the learned Advocate General, relying upon the affidavit and the records of the Government contends that considering the hue and cry of the legislators and the general public and in order to regulate the live bands in Bangalore, reasonable restrictions had to be placed in opening of these live bands and therefore with an intention to regulate the activities the Licensing Order has been brought into force forthwith. To consider the closing down of dance bars in Maharashtra State he has relied upon the records produced by him.

10. In the background of the arguments put forth by the learned Counsel appearing for all the parties, what is required to be considered by this Court in these Writ petitions is whether the Commissioner was satisfied with the circumstances existed on the date of issuance of the License Order to dispense

with the previous publication as per proviso to Sub-Section (6) of Section 31 of the Karnataka Police Act.

11 In *Mohinder Singh Gill v. Chief Election Commissioner*, (Supra) the Hon. Supreme Court has stated as hereunder:

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise, Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. In *Gordhandas Bhanji.*:

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older."

Relying upon this passage learned Counsel for the petitioners contend that in the statement of objections filed by the respondents, the influx of Bombay dance girls to Bangalore had not been disclosed by the Commissioner of police or by the State of Karnataka. Therefore the affidavit has been filed by him subsequently to support his action which was not available to him on the date of issuance of the notification. In other words, they contend that by filing an affidavit, the respondents are not expected to give fresh reasons in the shape of affidavit since such a situation was not there when the order was communicated by the respondents. Relying upon *Barium Chemicals Ltd. and Anr. v. Company Law Board and Ors.* Para 64, they contend that the circumstances shown in the Affidavit of the Police Commissioner was not available to the respondents when the notification was issued. Relying upon the Judgment of the Supreme Court reported in *Om Prakash and Another Vs. State of U.P. and Others*, contends that even in the present case there was no urgency to dispense with the previous publication of the draft rules.

12. After hearing the Counsel for the petitioner, I have also perused the records furnished by the State. The records reveal that many legislators have raised questions on the floor of the Assembly in regard to opening of the live bands in the residential locality of Bangalore and therefore the respondents had decided to bring a regulation to the live band activities. The State constituted a Sub-Committee known as "Ramalingam Committee" to bring regulation to the entire State. Accordingly, draft rules were prepared by the Committee and the same was referred to the Government for its approval. The approval was also signed by

the Commissioner of Police on 31st March 2005. A covering letter addressed by him to the Principal Secretary to the Home and Transport discloses that the matter was discussed with the Law Secretary and thereafter after, revising the draft rules, the revised draft rules were sent for previous publication. But all of a sudden without previous publication the present order has been brought into force with immediate effect from 24.5.2005. The records discloses that many articles were published in the newspapers in regard to the closure of dance bars in the State of Maharashtra and influx of dance girls from Bombay to Bangalore. The affidavit discloses that the Commissioner had a discussion with the Commissioner of Police, Bombay, on this aspect.

13. Considering these facts, this Court is of the opinion that there may be several circumstances in existence to bring out a licencing order 2005 forthwith by dispensing with the previous publication. But in the records, the police Commissioner has never stated the existence of these factual position in writing. It may be in the mind of the Commissioner of Police the necessity of bringing such an order to regulate the activities, considering the circumstances which were in existence in Bombay. But such a decision is not available on record. Therefore, it would be difficult to accept the affidavit filed by the Commissioner of Police, since this point does not find a place in the counter filed by the State. But other materials placed by the respondents disclose that there was an immediate necessity for the respondents to bring a regulation to regulate the live band activities in Bangalore. Though the draft order was prepared for the entire State, suddenly they have enforced the order only in regard to Bangalore City and leaving open the remaining places of Karnataka which according to the Court is a strong circumstance which is in favour of the respondents to bring such an order forthwith by dispensing with the previous publication. By perusal of the records, it reveals to the Court that the respondents had an intention to bring a regulation to the entire State. Accordingly, the Committee was constituted and draft rules were also prepared.

14. According to the petitioners, certain regulations incorporated in the order cannot be complied with by any of the applicants and it is impossible for an applicant to obtain a licence in Bangalore with the said conditions. According to them, if any opportunity had been given to them, they would have been able to satisfy the respondents to show that it is not to regulate the activities, but it is to close down the live band activities.

15. Section 31(6) and its proviso reads as hereunder:

"(6) The power of making, altering and rescinding orders, under this section shall be subject to the condition of the orders being made, altered or rescinded after previous publication, in accordance with the provisions, of Section 28 of the Karnataka General Clauses Act, 1899 and every order made or alteration or rescission of an order made under this section shall be published in the official Gazette and in the locality affected thereby by affixing copies thereof in conspicuous places near to the building, structure, work or place, as the case

may be, to which the same specifically relates or by proclaiming the same by the beating of drums or by advertising the same in such local news-papers in English or in the local language, as the authority making, altering or rescinding the order, rule may deem fit, or by any two or more of these means or by any other means it may think suitable.

Provided that any such orders may be made, altered or rescinded without previous publication, if the Commissioner or the District Magistrate, as the case may be, is satisfied that circumstances exist which render it necessary that such orders or alterations therein or rescission thereof should be brought into force at once."

16. Considering the proviso to Section 31(6) of the Karnataka Police Act, the learned Counsel appearing for the petitioners do not dispute the powers of the Commissioner of police to dispense with the previous publication. According to them, there were no compelling circumstances for the Commissioner of Police to dispense with the previous publication. They further contend that even if such circumstances were in existence, the Commissioner has not passed any order taking into consideration the circumstances which were in existence. Therefore, they contend that the respondents as an after thought are relying upon the proviso to Section 31(6) of the Karnataka Police Act.

17. After perusal of the records and considering the counter filed by the respondents, this Court is of the opinion that though it was in the mind of the Commissioner about the influx of dance girls from Bombay, there is nothing on record to show such circumstances. In the counter also, the respondents have not whispered anything about the influx of girls from Bombay to Bangalore or the law and order situation in Bangalore due to running of dance bars.

18. Therefore, this Court is of the opinion that there is no application of mind by the Commissioner to show the circumstances which were required to dispense with the previous publication as per the proviso to Section 31(6). In addition to that the petitioners have mainly contended that the regulations which are brought out by the respondents cannot be complied with by any of the applicants and if an opportunity had been given to them, they would have convinced the respondents how their rights would be affected and how such regulations cannot be implemented or brought into force.

19. In this background, I do see some force in the arguments of the learned Counsel for the petitioners to come to the conclusion that the petitioners should be heard in the matter before enforcing the present regulations, since the records do not disclose the application of mind by the Commissioner, though it maybe in his mind, but which does not depict in the records.

20. In the circumstances, this Court is of the opinion that the rules now produced should be treated as draft rules and an opportunity should be given to the petitioners and other affected parties to file their objections and the respondents after considering the objections are at liberty to bring fresh regulations in order

to regulate the activities of live bands in Bangalore.

21. At this stage, the learned Advocate General submits that in view of above findings, the petitioners and others may open the live band music in Bangalore, which may result in law and order problem. According to the learned advocate general petitioners and others should not be permitted to open the live band music in the bars and restaurants, till their objections are considered by the Government.

22. According to the learned Counsel for the petitioners, when once the Licensing and Controlling of places of public Entertainment (Bangalore City) Order 2005 is quashed and opportunity is given to the petitioners and others to file their objections, till fresh orders are passed, they are entitled to continue their business. According to them, since 24.5.2005 many artists and persons who are running the bars are without employment. According to them, their rights should not be curtailed by preventing the petitioners and others from opening of the live band music.

23. Therefore, this Court has to consider the request of the respondents in the background of the arguments put forth by the learned Counsel for the parties.

24. It is not in dispute that the live bands are closed since 24.5.2005. The Commissioner of Police is the proper person to assess the law and order problem in Bangalore City. The affidavit of the Commissioner and the records produced by the Government, disclose that due to the closure of dance bars in Maharashtra, there are every possibility of influx of dance girls from Bombay to Bangalore. It is no doubt true if the live bands are not allowed to run till the objections are considered by the respondents, it may cause unemployment for few persons and even there may be loss of income for the owners of the bars. But the maintenance of law and order is for the benefit of public at large. The law and order problem of Bangalore City has to be considered as paramount consideration than the problems of few persons. In the larger interest of general public, the problems of few individuals have to be sacrificed.

25. Therefore, this Court is of the opinion that till the new rules are framed, the live bands shall not be opened in Bangalore.

26. In the result, Annexure-A, namely, the Licensing and Controlling of places of Public Entertainment (Bangalore City) Order 2005, is hereby quashed. The same shall be treated as draft rules and the petitioners and other general public are entitled to file their objections within 30 days from today. If such objections are filed, the same shall be considered and fresh orders shall be passed on merits by the respondent. Commissioner of Police, in accordance with law within a period of two months.

27. Accordingly, these writ petitions are disposed of. In the circumstances, parties to bear their costs.