



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12910 OF 2025

Shivaji Sambu Waghralkar,
Sole Proprietor of M/s Hausa Restaurant
& Bar, The Affaire, Shop Nos. 14, 15, 16 and 19,
Plot No. 9, Sector-17, Sanpada,
Navi Mumbai, District – Thane

...Petitioner

Versus

1. The Commissioner of Police,
Office of Commissioner of Police at
Sector 10, opposite RBI, CBD Belapur,
Navi Mumbai, Maharashtra – 400 614.
2. Senior Police Inspector of Police,
Vashi Police Station

...Respondents

Mr. Bernardo Reis, a/w Pratik Dixit, i/b Parampara Mistry, for the
Petitioner.
Mr. V. G. Badgujar, AGP for the State.

CORAM : N. J. JAMADAR, J.
RESERVED ON : 06th JANUARY, 2026
PRONOUNCED ON : 2nd APRIL 2026

JUDGMENT:-

1. Rule. Rule made returnable forthwith and, with the consent of the learned Counsel for the parties, heard finally.
2. By this petition under Articles 226 and 227 of the Constitution of India the petitioner takes exception to the order dated 14th August, 2025 passed by the Divisional Commissioner, Konkan Division, in

Entertainment License Appeal No.15/2025, whereby the said appeal preferred by the petitioner against the order dated 24th February, 2025, passed by the Commissioner of Police, Navi Mumbai (R1) rejecting the application for an Entertainment License to operate the Orchestra at M/s. Hausa Restaurant and Bar, came to be dismissed.

3. The petitioner is the owner of M/s. Hausa Restaurant and Bar (the establishment) situated in a fully commercial building named “The Affaire”, located at Flat No.9, Sector 17, Sanpada, Navi Mumbai (the premises). To operate the said restaurant and bar at the said premises the petitioner has obtained an Eating House License issued by the Municipal Corporation and Foreign Liquor License-III (FL-III) under the Foreign Liquor Rules, 1953. The petitioner desired to have an Orchestra License for live music performances in the said establishment. The petitioner never intended to, nor intends to hold, “dance performances” in the said establishment. Thus, the petitioner filed an application for grant of a Live Music Orchestra performance license under the provisions of the the Maharashtra Police Act, 1951 (“the Police Act, 1951”) and the Rules for Licensing and Controlling Places of Public Amusement (other than Cinemas) and Performances (including Melas and Tamashas), 1999, (“the Public Amusement Rules, 1999”). All requisite compliances were made. No objection certificate was obtained from the concerned police station.

4. It is the grievance of the petitioner that, a misinformation campaign was started by persons having a vested interest. On the basis of the alleged objections received from 23 Co-operative Housing Societies, 232 citizens/local public representatives and one business association, and the media reports indicating opposition to the grant of performance license, respondent No.1, the petitioner asserts, refused the license to operate a live music Orchestra purportedly in exercise of powers under Rule 104 of the Public Amusement Rules, 1999.

5. Being aggrieved, the petitioner preferred an appeal before the Divisional Commissioner under Section 33 of the Police Act, 1951.

6. By the impugned order, the Divisional Commissioner rejected the appeal concurring with the view of respondent No.1 – the Licensing Authority. The petitioner claims that the Appellate Authority did not examine the matter at all and by a one line reasoning that the Licensing Authority rightly decided the application by assessing law and order situation, dismissed the appeal.

7. Being thus aggrieved, the petitioner has invoked the writ jurisdiction. A slew of exceptions are taken to the order of refusal of licence passed by the Licensing Authority, and the impugned order.

8. Firstly, the order of refusal of license passed by respondent No.1 was arbitrary and beyond the scope of the provisions contained in Rule

104 of the Public Amusement Rules, 1999. Secondly, breach of principles of natural justice is alleged, as no opportunity of hearing was granted to the petitioner before passing the order, by the Licencing Authority. Thirdly, the impugned orders are in breach of the provisions contained in the Police Act and the Public Amusement Rules, 1999 and impinge upon the fundamental rights of the petitioner. Fourthly, the petitioner was subjected to invidious discrimination, as there are two bars in the very same building, which have been granted licence to play pre-recorded loud music. Lastly, the Licensing Authority has granted licenses to 53 other bars in Navi Mumbai area to operate Orchestra and live music performance.

9. An affidavit-in-reply has been filed on behalf of the respondents. The refusal to grant the license to operate a live orchestra is sought to be justified on the ground that the Licensing Authority, on the basis of objective material, has arrived at the conclusion that the grant of Orchestra Licence has the propensity to create a serious law and order situation. The fact that the petitioner holds an Eating House License and FL-III License at the said premises is stated to be wholly irrelevant for determining the prayer for grant of an Orchestra License. In substance, it is the contention of the respondents that in response to the public notice issued by the Licensing Authority several objections were received from Co-operative Housing Societies, citizens, local public

representatives and business association. And, thus, the license was justifiably refused by respondent No.1.

10. I have heard Mr. Reis, the learned Counsel for the petitioner, and Mr. Badgular, the learned AGP for the State, at some length. With the assistance of the learned Counsel for the parties, I have also perused the material on record including the documents filed alongwith the affidavit-in-reply on behalf of the respondents.

11. Mr. Reis, the learned Counsel for the petitioner, mounted a multi-fold challenge to the impugned orders. First and foremost, Mr. Reis would urge, the impugned order suffers from the vice of flagrant violation of the principles of natural justice. No opportunity of personal hearing was granted to the petitioner before the order of rejection of licence came to be passed. Secondly, the impugned order passed by the Divisional Commissioner, Mr. Reis would urge, singularly lacks reasons. The Divisional Commissioner has copiously extracted the contentions of the parties and the substance of the order passed by the Licensing Authority and, thereafter, simply observed that the Licensing Authority has rightly refused the licence apprehending law and order situation. The Divisional Commissioner has not at all examined the legality and correctness of the order passed by the Licensing Authority in the light of the grounds of challenge raised by the petitioner.

12. Thirdly, Mr. Reis would urge, the reasons for which the license has been refused do not fall within the ambit of any of the clauses of Rule 104 of the Public Amusement Rules, and thus, in the affidavit-in-reply an endeavour has been made on behalf of the respondents to support the refusal of license by pressing into service the grounds on which the licence was not refused by the Licensing Authority

13. Lastly, Mr. Reis strenuously submitted that, despite a categorical undertaking of the petitioner that the petitioner would not operate a dance bar, on the basis of a misinformation campaign, the petitioner's fundamental rights have been trampled upon. Even in the matter of operation of the dance bars, the Supreme Court has castigated the instrumentalities of the State for imposing arbitrary, unreasonable and onerous conditions. To lend support to this submission, Mr. Reis placed reliance on a judgment of the Supreme Court in the case of *Hotel Priya, A Proprietorship vs. State of Maharashtra and others*¹.

14. Per contra, Mr. Badgujar, the learned AGP, supported the impugned orders, with tenacity. It was submitted that the grant of licence is in the discretion of the Licensing Authority. Since in response to the public notice, inviting the objections to the proposal to operate a live Orchestra in the petitioner's premises, hundreds of objections were received, no fault can be found with the exercise of discretion by the

1 2022 SCC OnLine SC 204.

Licensing Authority. The assessment of the Licensing Authority that the grant of license to operate a live orchestra may lead to a law and order situation is not open for interference in exercise of the supervisory jurisdiction as the Licensing Authority is best suited to assess the situation.

15. Mr. Badgujar further submitted that, the petition suffers from gross suppression of facts. It has transpired that there have been numerous complaints of violations of the terms of Orchestra License at Kalpana Restaurant, run by the petitioner at Vashi, and several reports of commission of cognizable and non-cognizable offences have been registered against the petitioner in connection therewith. On five occasions, the said license has been suspended. Thus, the petitioner who has resorted to gross suppression of facts does not deserve any relief, submitted Mr. Badgujar.

16. I have given anxious consideration to the submissions canvassed across the bar. The core controversy revolves around the justifiability of the refusal of license to operate live Orchestra. Before addressing the contentious issues, it may be apposite to have a resume of the statutory provisions and the rules which govern the grant or refusal of the licence.

17. Chapter IV of the Police Act, 1951 contains the provisions under the heading, "Police Regulations". Under Section 33 of the Police Act, ARS

1951, distinct authorities have been empowered to make rules for regulations of traffic and for preservation of order in public places, etc. Clauses (w) and (wa) of sub-section (1) of Section 33 empower the Commissioner of police to make rules *inter alia* for licensing or controlling places of Public amusement or entertainment, prohibiting the keeping of places of public amusement or entertainment or assembly, in order to prevent obstruction, inconvenience, annoyance, risk, danger or damage to the residents or passengers in the vicinity and the Licensing or Controlling [in the interest of public order, decency or morality or in the interest of the general public], with such exceptions as may be specified, the musical, dancing, mimetic or the article or other performances for the public amusement, including melas and tamashas.

18. In exercise of the powers conferred under Section 33(1) of the Police Act, 1951, the Commissioner of Police, Navi Mumbai, has made Public Amusement Rules, 1999. A brief reference to the relevant Rules may be necessary. Under Rule 2(i); the 'Premises' and under Clause (j); "Public Amusement performance" are defined as under:

"2(i) "Premises" means any place which is used or is intended to be used as a place or public amusement or any place other than cinema theatre wherein musical, dancing, dramatic, mimetics, theatrical or other performances of public amusement, exhibition or diversion or game are staged.

2(j) “Public Amusement Performance” means a performance of dramas, songs, dances, mimetics and similar other performances given in a place of public amusement or in any other place whether with or without admission fee and to which admission is not restricted exclusively to the members of any particular institution.”

19. Chapter II of the Public Amusement Rules, 1999 makes provision for issue of No Objection Certificate for the use of a premises as a place for public amusement. Under Rule 4, before grant of No Objection Certificate, the Licensing Authority is enjoined to notify the public of the intention of the prospective licence to put to use the given premises as a place of public amusement, for the purpose of inviting the objections. Under Rule 5, without prejudice to the authority of the Licensing Authority to refuse or grant licenses for premises and performances under rule 93 and 94 and 103 and 104, the Licensing Authority may grant No Objection Certificate at the site notified by the Applicant.

20. Under the scheme of the Public Amusement Rules, 1999, there is a necessity to have independent premises licence and performance licence. Chapter VIII of the Public Amusement Rules, 1999, subsumes provisions in relation to, “Premises Licence”. Chapter IX deals with “Performance Licence”.

21. Rule 91 proscribes the use of the premises as a place of public amusement unless the persons being the owner or occupant thereof shall have obtained a premises licence therefor. Under Rule 94, the ARS

Licensing Authority may refuse a premises licence, if appears to it, that the premises is likely to cause obstruction, inconvenience, risk or danger to residents or passers by in the vicinity of the premises.

22. Likewise, Rule 100 proscribes performances sans licence. It provides no person shall hold a musical, dancing, dramatic, mimetic, theatrical or other performance; for public amusement including Melas and Tamashas or any public exhibition or diversion or game by whatever name called unless and until he has obtained a performance licence from the Licensing Authority to hold such performance.

23. Rule 104, with which we are primarily concerned, empowers the Licensing Authority to refuse the licence in specified cases. Rule 104 reads as under:

“104. Power to refuse Licence.— The Licensing Authority may refuse, except in the case of a Mela, Tamasha and Ras, a licence to perform or exhibit any or all of the plays or all of exhibitions or any other items of performance included in the application for licence if he considers them:—

- (a) To be indecent or of a scurrilous character;
- (b) To contain offensive references to personalities;
- (c) To wound the susceptibilities of any motion or followers of any religion;
- (d) To be seditious or to be likely to excite political discontent;
- (e) To promote hostile feelings between different classes;

- (f) To be calculated to cause a breach of the peace; or
- (g) To be objectionable on any ground other than those specified in (a), (b), (c), (d) and (f).

The Licensing Authority shall not be bound to state the reasons for refusing any Performance Licence except in case of ground (g), when he shall give such reasons in writing.”

24. Evidently, Clauses (a) to (f) of Rule 104 empower the Licensing Authority to refuse licence for the specified reasons. Clause (g), which is residuary in nature, provides that the Licensing Authority may refuse the performance licence if he considers the performance, “to be objectionable on any ground other than those specified in Clauses (a) to (f)”. The Licensing Authority need not give reasons for refusing of performance licence, except in case of ground (g), whereunder he is enjoined to record reasons in writing, if the performance is considered to be objectionable.

25. In the case at hand, the performance licence has been refused under Rule 104, on the ground that the Licensing Authority was of the view that, in the event the licence to operate orchestra was granted a serious law and order situation was likely to arise. It appears, the Licencing Authority has resorted to residuary Clause (g) of Rule 104, as the licence does not seem to have been refused with reference to any of the grounds enumerated in clauses (a) to (f). Whether the aforesaid action is justifiable?

26. As is evident from the order passed by Licensing Authority, it appears that the Licensing Authority had received objections to the notice published under Rule 4 of the Public Amusement Rules, 1999 to the grant of the licence to operate orchestra and live music at the establishment. It records that 23 cooperative housing societies, 232 citizens/local representatives and one Association of Merchants had lodged objections for the grant of licence to operate orchestra and, there were news report which revealed that the citizens were protesting against the possible grant of the licence to the Petitioner. On the basis of the aforesaid material, the Licensing Authority was persuaded to reject the Application observing that a serious law and order situation was likely to arise if the licence was granted.

27. Before the Appellate Authority, it appears, a spot inspection report was submitted by the Deputy Collector-cum-Special Executive Officer, Konkan Division. To assess the justifiability of refusal of the licence, the said spot inspection report deserves to be considered.

28. The following features emerge from the spot inspection report. The establishment was located on the ground floor of the building, "Affaires". The said building was a completely commercial premises. There were two bars, namely, "91 Palm Lounge Bar" and "Rosewood Bar" on the ground floor of the said building. On the northern side of the Affaires, there were two buildings. The first building was also

having commercial offices, establishments and residential flats, from 4th floor onward. The second building was having only commercial establishments. In the first building there was a bar styled, “ Sajo Bar” and, in the second building, there was another bar, “Atarangi Bar”.

29. It would be contextually relevant to note that in the Affidavit in Reply filed on behalf of the Respondents, refuting the contention of the petitioner that, in Navi Mumbai Commissionerate, there were 53 bars which were granted licence to operate orchestra/live music, it was contended that, licence to operate orchestra/live music performance was granted to 43 bars/establishments.

30. The situation which thus emerges is that in the very building, nay the ground floor on which the Petitioner intended to have a performance licence to operate an orchestra, there were two bars where the liquor was served and pre-recorded live music was allowed to be played. Likewise, in two adjacent buildings of the Affaires, there were two bars, namely Sajo and Atarangi. The building, in which the premises was situated and the Petitioner intended to have licence to operate an orchestra, was completely commercial. One of the ad-joining buildings was, however, of mixed use. Incontrovertibly, in Navi Mumbai Commissionerate area itself, the Licensing Authority had issued as many as 43 licences to operate orchestra/live music. Thus, two facts becomes absolutely clear. First, there are bars in the very building where the

establishment in question is situated and in the adjoining buildings. Second, the Licensing Authority has granted licence to operate orchestra/live music performances for more than 40 establishments.

31. Keeping in view the aforesaid factual backdrop, an answer to the aforesaid question about the justifiability of refusal of licence deserves to be explored, in two parts. First, the procedural fairness. Second, the exercise of power within the bounds of law.

32. On the aspect of failure to provide an opportunity of hearing to the petitioner before the rejection of the application for performance license, it is not denied that no such opportunity of hearing was given to the petitioner. On the contrary, the failure to provide an opportunity of hearing was sought to be justified by the learned AGP by submitting that in a case of the present nature, it is the interest of general public which is paramount and the failure to give an opportunity of hearing to the Petitioner by the Licensing Authority cannot be said to have caused irreparable prejudice to the Petitioner. In fact in the Affidavit in Reply an assertion has been made that even if the opportunity of hearing would be given to the Petitioner the consequence would have been same.

33. I am afraid to accede to this submission. If the Licensing Authority performs an administrative function which entails civil consequences, the Licensing Authority must provide an efficacious opportunity of hearing to the person against whom an adverse order is

passed. The Petitioner could have shown the unsustainability of the objections filed on behalf of the cooperative housing societies and citizens that the Petitioner would start a dance bar/ladies bar in the subject premise.

34. In the case of **UMC Technologies Private Limited vs Food Corporation Of India and another²**, the Supreme Court enunciated that, it must be noted that it is the first principle of civilised jurisprudence that a person against whom any action is sought to be taken or whose right or interests are being affected should be given a reasonable opportunity to defend himself. The basic principle of natural justice is that before adjudication starts, the authority concerned should give to the affected party a notice of the case against him so that he can defend himself.

35. A Constitution Bench of the Supreme Court in the case of **CORE vs. ECL SPIC SMO MCML (JV) (2025) 4 SCC 641**, postulated the object of observing the principles of natural justice as under:

“..... The object of observing the principles of natural justice is to ensure that “every person whose rights are going to be affected by the proposed action gets a fair hearing.”¹⁵⁸ The non-observance of natural justice is itself a prejudice to any person who has been denied justice depending upon the facts and circumstances of each case.¹⁵⁹ The principle of procedural fairness is rooted in the principles of the rule of law and good governance. In *Madhyamam Broadcasting Limited v. Union of India*, (2023) 13 SCC 401 this Court held that the requirement of procedural fairness “holds an inherent value in itself.....”

² (2021) 2 SCC 551

36. Mr. Badgular, the learned AGP further attempted to salvage the position by submitting that before the Appellate Authority an efficacious opportunity of hearing was given to the Petitioner. This submission also does not merit acceptance.

37. If an efficacious opportunity of hearing was not given to a party in the Court of first instance, the prejudice thereby caused cannot be remedied by providing an opportunity of hearing in the Appeal. If natural justice is violated at the first instance, the right of appeal cannot be a panacea. The net effect would be, instead of a fair trial followed by appeal, there would be, at best, an unfair trial followed by fair trial.

38. In a recent pronouncement in the case of **Krishnadatt Awasthy vs. State of Madhya Pradesh and others**³, a three-Judge Bench of the Supreme Court considered the question whether denial of natural justice at the initial stage can be cured by an appellate body. The Supreme Court enunciated that the provision for an appeal should not rest on the assumption that the appellate body is infallible. When one party is denied the opportunity to present their case, the initial decision fails to provide meaningful guidance to the appellate authority, in achieving a fair and just resolution. The Supreme Court answered the question as under:

3 (2025) 7 Supreme Court Cases 545

“70. Following the above discussion, it must be concluded that a defect at the initial stage cannot generally be cured at the appellate stage. Even in cases where a “full jurisdiction” may be available at the appellate stage, the courts must have the discretion to relegate it to the original stage for an opportunity of hearing. Therefore, the ex parte decision to set aside the appellants’ selection stands vitiated.”

(emphasis supplied)

39. This Court is of the view that, in the case at hand, the order passed by the licensing authority is infirm for non-observance of the principles of natural justice as no opportunity of hearing was provided to the petitioner in the context of the objections received on behalf of the co-operative societies and citizens.

40. Article 19(1)(g) of the Constitution of India declares that all citizens shall have the right to practice any profession, or to carry on any occupation, trade or business. Right to practise any profession or to right to any occupation, trade or business is one of the fundamental freedoms guaranteed by the Constitution. Under Clause (6) of Article 19, the State is empowered to impose reasonable restrictions on the exercise of the right conferred by said sub-clause in the interest of general public. The legality and justifiability of the action of refusal of licence would thus be required to be tested on the anvil of the constitutional protection.

41. The power to impose reasonable restrictions on the right to carry on any occupation, trade or business is in the interest of general public. The fact that the competent authorities have granted licences to operate the premises as a eating house place and even an FL-III licence,

indicates that the extant activity of operating a bar and restaurant, albeit under requisite licences, cannot be said to be one which is prohibited. Nor the operation of orchestra or staging live music performance can said to be inherently dangerous or injurious to general public.

42. Since the Licensing Authority does not claim that there is no policy of issuing a performance licence to operate orchestra and/or render live music performances and has, in fact, issued such licences to more than 40 establishments within its jurisdiction, the staging of orchestra/live music performances cannot be said to be per se indecent or profane.

43. In a different context, in the case of **State of Punjab Vs Devans Modern Breweries Ltd,**⁴ the Supreme Court enunciated that dealing in a commodity which is governed by a statute cannot be said to be inherently noxious and pernicious. The State is entitled to prohibit any trade or commerce in potable liquor. However, once a licence is granted to carry on any trade or business, can it be said that a person is committing a crime in carrying on business in liquor although he strictly complies with the terms and conditions of licence and the provisions of the statute operating in the field? The Supreme Court observed that, if the answer to the said question was to be rendered in the affirmative, it

⁴ (2004) 11 SCC 26.

will create havoc and lead to anarchy and judicial vagaries. It was concluded, so long as, it is not made impermissible to carry on such business by reason of a statute, no crime can be said to have been committed in relation thereto.

44. The following observations of the Supreme Court are instructive and hence extracted below.

“48. Dealing in a commodity which is governed by a statute cannot be said to be inherently noxious and pernicious. A society cannot condemn a business nor there exists a presumption in this behalf if such business is permitted to be carried out under statutory enactments made by the legislature competent therefor. The legislature being the final arbiter as to the morality or otherwise of the civilized society has also to state as to business in which article(s) would be criminal in nature. The society will have no say in the matter. The society might have a say in the matter which could have been considered in a Court of law only under common-law right and not when the rights and obligations flow out of statutes operating in the field. Health, safety and welfare of the general public may again be a matter for the legislature to define and prohibit or regulate by legislative enactments. Regulatory statutes are enacted in conformity with Clause (6) of Article 19 of the Constitution to deal with those trades also which are inherently noxious and pernicious in nature; and furthermore, thereby sufficient measures are to be taken in relation to health, safety and welfare of the general public. The courts while interpreting a statute would not take recourse to such interpretation whereby a person can be said to have committed a crime although the same is not a crime in terms of the statutory enactment.

Whether dealing in a commodity by a person constitutes a crime or not can only be the subject-matter of a statutory enactment.

... ..

51. From the analysis of decisions rendered by this Court in *Cooverjee B. Bharucha, R.M.D. Chamarbaugwala, Har Shankar* or *Khoday Distilleries*, it will appear that a person cannot claim any right to deal in any obnoxious substance on the ground of public morality. The State, therefore, is entitled to completely prohibit any trade or commerce in potable liquor. Such prohibition, however, has not been imposed. Once a licence is granted to carry on any trade or business, can it be said that a person is committing a crime in carrying on business in liquor although he strictly complies with the terms and conditions of licence and the provisions of the statute operating in the field? If the answer to the said question is to be rendered in the affirmative it will create havoc and lead to anarchy and judicial vagaries. When it is not a crime to carry on such business having regard to the fact that a person has been permitted to do so by the State in compliance with the provisions of the existing laws, indisputably he acquires a right to carry on business. Even in respect to trade in food articles or other essential commodities either complete prohibition or restrictions are imposed in the matter of carrying on any trade or business, except in terms of a licence granted in that behalf by the authorities specified in that behalf. The distinction between a trade or business being carried out legally or illegally having regard to the restrictions imposed by a statute would have, therefore, to be judged by the fact as to whether such business is being carried out in compliance with the provisions of the statute(s) operating in the field or not. In other words, so long it is not made impermissible to carry on such business by reason of a statute, no crime can be said to have been committed in relation thereto. The doctrine of res

extra commercium, thus, would not be attracted, whence a person carries on business under a licence granted in terms of the provisions of the regulatory statutes.

... ..

317. The matter is covered by statutory provisions. The court cannot interpret equality, freedom or commerce clauses of the Constitution in such a manner so as to take away the rights and obligations created under a statute on the ground of public morality or otherwise. When a statute permits a trade, morality takes a back seat as “legislature” as contradistinguished from “judiciary” is supposed to be the authority to consider the morality or otherwise of certain things prevailing in the society.”

45. The Supreme Court has thus emphasized that the legislature is the final arbiter as to the morality or otherwise of the civilised society and has also to state as to what business in which articles would be criminal in nature. The society will have no say in the matter. The Society might have say in the matter which could have been considered in a Court of law only under common law right and not when the right and obligations flow out of statute operating in the field. Health, safety and general welfare of the public may again be a matter for the legislature to define and prohibit or regulate by legislative enactments.

46. On the aforesaid touchstone, reverting to the facts of the case at hand, it is imperative to note that the sole ground on which the Application for performance licence has been refused is that, objections have been raised by the cooperative housing societies, citizens and local

peoples representatives and a business Association. Copy of those objections have been annexed by the State to the Affidavit in Reply. From a perusal of those objections, it becomes evident that the objections are based on the premise that the premises may be used for dance bar/ ladies bar and the presence of dance bars/ladies bar would cause negative impact in the neighborhood and would give rise to public safety and security concerns.

47. In some of the representations, there is a reference to the peoples representatives spearheading the campaign. However, without delving into the contention on behalf of the Petitioner that a misinformation campaign was orchestrated against the Petitioner, on an objective analysis, the Courts finds that the resistance stemmed from the apprehension that the Petitioner would operate a dance bar/ladies bar, under the guise of orchestra.

48. It would be necessary to note that the Application for performance licence clearly records that the performance licence was sought for live band with one stage. It is not the case of the Respondents that the performance licence was required to be refused as there was an apprehension that the Petitioner would run dance bar/ladies bar under the guise of orchestra. Could the Licensing Authority thus refuse the performance licence on the basis of the

perceived misuse of the premises in the objections lodged in response to the notice?

49. In view of the provisions contained in Rule 104 of the the Public Amusement Rules, 1999, the power to refuse the licence can be exercised for the specified reasons. Under the residuary clause (g), “objectionable on any ground other than those specified in Clauses (a) to (f)”, the Licensing Authority cannot be said to have an unfettered and unregulated power to refuse the licence. Such interpretation would give a carte blanche to the Licensing Authority.

50. To what extent, the Licensing Authority could refuse the performance licence, if the Applicant satisfies all other requirements solely on the basis of the objections raised by the members of the public in response to the notice under Rule 4 is a matter which warrants a balancing exercise. On the one part, the guarantee of fundamental freedom to carry on any trade or occupation or business is to be secured. On the other hand, the general public needs to be protected from the potential harm that may result from carrying on the particular trade or occupation. Since the activity is regulated by statute and rules, and is not per se immoral, dangerous or inherently injurious, the issue of justifiability of objections based on morality crops up for consideration.

51. In the case of **Indian Hotel and Restaurant Association (Ahar) and Anr Vs State of Maharashtra**⁵ while examining the constitutionality of certain provisions of the Maharashtra Prohibition of Obscene Dance in Hotels, Restaurants and Bar rooms and Protection of Dignity of Women (working therein) Act, 2016 (“the Act 2016”) and the Rules framed thereunder, the Supreme Court reemphasized that the State cannot take exception to dance performance per se. In the process, the Supreme Court made the following observations:

“79. It needs to be borne in mind that there may be certain activities which the society perceives as immoral per se. It may include gambling (though that is also becoming a debatable issue now), prostitution etc. It is also to be noted that standards of morality in a society change with the passage of time. A particular activity, which was treated as immoral few decades ago may not be so now. Societal norms keep changing. Social change is of two types: continuous or evolutionary and discontinuous or revolutionary²⁵. The most common form of change is continuous. This day-to-day incremental change is a subtle, but dynamic, factor in social analysis. It cannot be denied that dance performances, in dignified forms, are socially acceptable and nobody takes exceptions to the same. On the other hand, obscenity is treated as immoral. Therefore, obscene dance performance may not be acceptable and the State can pass a law prohibiting obscene dances. However, a practice which may not be immoral by societal standards cannot be thrust upon the society as immoral by the State with its own notion of morality and thereby exercise ‘social control’.

5 (2019) 3 SCC 429.

Furthermore, and in any case, any legislation of this nature has to pass the muster of constitutional provisions as well. We have examined the issues raised in the aforesaid context.

80. This brings us to the Principle of res extra commercium. Insofar as dance performances are concerned, it has already been held that it is not res extra commercium. We would, at this stage, again refer to Indian Hotel and Restaurants Association (1) where these aspects are dealt with as under:

.....

80.2 Injury to Public Morals: The Court categorically rejected the contention that the dance bars affect or cause harm to public morale. In pertinent part, this Court stated that: "120. ..In our opinion, the State neither had the empirical data to conclude that dancing in the prohibited establishment necessarily leads to depravity and corruption of public morals nor was there general consensus that such was the situation..."

80.3 **Res Extra Commercium:** The State Government contended that the dance performances in such establishments affect the dignity of women and leads to corruption of public morals. Thus, the respondent justified that the prohibition is a reasonable restriction necessary "in the interest of general public" as under Article 19(6) of the Constitution. This Court categorically rejected the said contention, and held that the respondent "failed to establish that the restriction is reasonable or that it is in the interest of general public". This Court further added that the prohibition fails to satisfy the doctrine of 'direct and inevitable effect' to justify such restriction, and the insufficiency of the existing regulatory framework."

52. In the case of *Hotel Priya, A Proprietorship (Supra)*, which also arose out of the conditions imposed on the orchestra performance under the Public Amusement Rules, 1999 namely, (i) the licensee was permitted to keep only four women singers/artists and four male singers/artists to remain present on permitted stage and (ii) only eight artists were permitted to remain present on the permitted stage (four male and four women), the Supreme Court examined the legality and justifiability of those conditions.

53. The Supreme Court observed that the impugned gender-cap (i.e. four females and four males, in any performance) appeared to be the product of a stereotypical view that women who perform in the bars and establishments, like the appellants, belong to a certain class of society. The Supreme Court declared the condition imposing a gender cap as to the number of women or men, who can perform in orchestras and bands, in bars licenced under the Rules, 1960 and other allied provisions, was void. While the overall limit of performers in any given performance cannot exceed eight, the composition (i.e., all female, majority female or male, or vice versa) can be of any combination, declared the Supreme Court. After referring to the previous pronouncement in the case of *Hotel Priya, A Proprietorship (Supra)*, the Supreme Court observed *inter alia* as under:

“43. It is thus clear that each of the arguments which the state is relying on, were considered in the context of challenge to statutory prohibitions, as well as license conditions. The arguments advanced in the present case, that the restrictions are necessary in the public interest, to promote the welfare of women, prevent human trafficking in women, and their exploitation, and that the restrictions are necessary in the interest of public morals, are well worn, and have been decisively rejected. Apart from regurgitating the same rejected submissions, the state has not justified, independently, how the gender-cap, as for an individual orchestra or band, is regulatory.”

54. In the light of the aforesaid position in law, in the considered view of this Court, the impugned order refusing the performance licence on the ground that a serious law and order situation may arise if licence for orchestra/live music performance was granted, appeared to be without any objective basis. The Licensing Authority has taken into account the objections raised on behalf of the society and citizens which were evidently based on an incorrect impression that once the orchestra/live music performance licensee is granted, the Petitioner would operate the dance bar/ ladies bar. In view of the provisions of the Act 2016, even the operating of dance bar *per se* is not completely prohibited. Thus on an misplaced apprehension, the performance licence could not have been rejected.

55. For the forgoing reasons the Petition deserves to be allowed.

56. Hence, the following order:

: O R D E R:

- (i) The Petition stands allowed.
- (ii) The impugned order as well as the order passed by the Licensing Authority refusing the performance licence stand quashed and set aside.
- (iii) The Licensing Authority shall grant performance licence to operate orchestra/live music performance, if other conditions are fulfilled, within a period of four weeks from the date of communication of this order.
- (iv) Rule made absolute to the aforesaid extent.

No costs.

[N. J. JAMADAR, J.]