

ITEM NO.4

COURT NO.4

SECTION X

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(s) (Civil) No(s). 793/2014

INDIAN HOTEL & RESTAURANT ASSOCIATION & ANR.

Petitioner(s)

VERSUS

STATE OF MAHARASHTRA & ANR.

Respondent(s)

WITH

CONMT.PET.(C) No. 275/2014 In C.A. No. 2705/2006

(With appln.(s) for exemption from personal appearance and Office Report for Direction)

CONMT.PET.(C) No. 248/2014 In C.A. No. 2705/2006

(With appln.(s) for exemption from personal appearance and Office Report for Direction)

Date : 02/03/2016 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE SHIVA KIRTI SINGH

For Petitioner(s) Mr. Jayant Bhushan, Sr. Adv.
Mr. Prasenjit Keswani, Adv.
Mr. Satyajit Saha, Adv.
Mrs V. D. Khanna, Adv.

For Respondent(s) Ms. Pinky Anand, ASG
Mr. Nishant Ramakantrao Katneshwarkar, AOR
Mr. Arpit Rai, Adv.
Ms. Saudamini Sharma, Adv.

Mr. Sandeep Deshmukh, Adv.
Mr. Nar Hari Singh, Adv.

Mr. Ravindra Keshavrao Adsure, AOR

Dr. Rajeev Dhavan, Sr. Adv.
Mr. Nikhil Nayyar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

On the last occasion, the Court had noted 7 (seven) conditions which had been taken exception to by Mr. Jayant Bhushan, learned

senior counsel appearing for the petitioners. The exceptions relate to condition nos.1, 2, 5, 10, 12 and 15.

Condition no.1 reads as follows :

"1) This licence is valid for only one stage of 10 ft. x 12 ft. in size in restaurant area as per approved plan of the excise department for F.L.-III with non-transparent partition between restaurant and permit room area."

It is submitted by Ms. Pinky Anand, learned Additional Solicitor General on the basis of the affidavit that as per the approved plan of the Excise Department for permit rooms with FL-III licence, there is always a necessity for providing a non-transparent partition between the restaurant and the permit room area. It is urged by her that the intention of the Excise Department behind incorporation of the said condition is to keep the permit room area separate from the restaurant area where alcohol is not served. Be it noted, the said condition has been modified to the following extent :

"This licence is valid for only one stage of 10 ft. x 12 ft. size in restaurant area/permit room as per approved plan of the Excise Department for F.L.-III with non transparent partition between restaurant and permit room area."

The said condition is accepted by the petitioners and, therefore, we shall not dwell upon the same.

As far as the condition no.2 is concerned, it reads as follows:

"2) The stage should cover from all sides by a non removable partition of 3 ft. height."

In the affidavit filed by the State, the said condition has been modified as follows :

"(2) There shall be a railing of 3 ft. height adjacent to the dance stage. There should be distance of 5 ft. between the railing and seats for the customers. In respect of dance bars which have secured licenses earlier, provisions mentioned above be made binding. It should be made binding on dance bars seeking new licenses to have railing of 3 ft. height adjacent to the stage and leaving a distance of 5 ft between the railing and sitting arrangement for customers."

Mr. Bhushan, learned senior counsel would submit that regard being had to the suggestions noted in State of Maharashtra & Anr. vs. Indian Hotel and Restaurants Association & Ors. [(2013) 8 SCC 519, the railing of 3 ft. height can be put *in praesenti* subject to the further arguments to be canvassed at a later stage but there cannot be non-removable partition. Having heard learned counsel for the parties, we accept the submission of Mr. Bhushan, learned senior counsel and direct that there should be railing of 3 ft. height and not the non-removable partition. The railing is meant for creating barrier between the performers and the audience.

Condition No.5 is to the following effect :

"5) The licensee is permitted to keep only 04 dancers/artists to remain present on the permitted stage."

It is submitted by Mr. Bhushan that he has no objection to the said condition but it may be clarified that other artists can remain present in the premises to which there is no objection by learned Additional Solicitor General. Hence, we clarify that four dancers can perform on the stage at one time but there can be other artists at other places inside the premises.

Condition no.10 reads as follows :

"10) The Licensee shall ensure that the character and antecedents of all employees is verified by the police."

Though there is no suggestion in the affidavit as regards the said condition, it is submitted by Mr. Bhushan, learned senior counsel, that it has to be restricted to criminal antecedents. We agree with the same. Any employee who is engaged, his/her criminal antecedents are to be verified. It is imperative.

Condition No.11 reads as follows :

"11) The Licensee shall not allow any addition or alternation to be made to the premises except without the written permission of the Competent Authority i.e. DCP (HQ-I) for Mumbai or concerned DCP/SP for other areas."

The aforesaid condition is modified to the extent that the premises shall not be altered/modified without the permission of the competent authority under the statute. However, it is hereby directed that if there will be any grievance on this score, the parties are at liberty to approach this Court.

Condition no. 12 reads as follows :

"12) The Licensee shall ensure that no concealed cavity or a room is created within the premises in order to conceal performers/staff."

Mr. Bhushan, learned senior counsel submitted that he has no objection to the said condition but there should be a room which can be utilised as a green room. We so direct. Be it clarified, green room means green room in the manner in which it is understood in the classical sense.

Condition no. 15 on which the parties are at real cavil reads as follows :

"15) The Licensee shall ensure that adequate number of CCTV cameras which will live feed continuously to police control room be installed to cover the entire premises which will record

the entire daily performance and the same will be monitored by a specially appointed person on a monitor/display. The daily recording of performance of last 30 days would preserved and will be made available to any competent authority as and when required for viewing."

Having heard learned counsel for the parties, Dr. Rajeev Dhawan, learned senior counsel, who sought permission to file an application for intervention and Mr. Sandeep Deshmukh, learned counsel for the 5th respondent, we are inclined to modify the said condition to the extent that CCTV cameras shall be fixed at the entrance of the premises in question but shall not be fixed in the restaurant or the permit area or the performance area.

As we have clarified the conditions, the modified conditions along with conditions on which there is no cavil shall be complied with within three days and the respondents shall issue the licences within ten days therefrom. We are sure, the authorities shall act in accordance with the command of this Court and not venture to deviate.

Let the matter be listed after two weeks.

Liberty to mention.

(Gulshan Kumar Arora)
Court Master

(H.S. Parasher)
Court Master