

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8118 OF 2026

Alanzo Trademart Pvt Ltd,
A company incorporated under
the provisions of the Companies Act, 2013,
having its Registered Office at
Navish House, Building No. 87, Plot No. 99,
S.V. Road, Opp. Amore Edge,
Khar West, Greater Mumbai – 400 052,
through its Director
Sadashiv Durgaprasad Pandey,
aged about 51 years,
Occupation – Director of the Petitioner Company. ...Petitioner

Versus

1. The Deputy Commissioner of Police,
Headquarters – I, Licensing Authority (Hotel
Branch), Office of Commissioner of Police,
in front of Crawford Market,
Brihan Mumbai – 400 001.

2. The Senior Police Inspector,
Khar Police Station, Khar (W), ...Respondents
Mumbai – 400 052.

Mr. Bernardo Reis, with Pratik Dixit, i/b Parampara Mistry, for the
Petitioner.
Smt. V. R. Raje, AGP, for Respondent Nos. 1 and 2-State.

CORAM : N. J. JAMADAR, J.

RESERVED ON : 24th AUGUST 2026

PRONOUNCED ON : 16th SEPTEMBER 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 Article 227 of the Constitution of India, the Petitioner takes exception to an order dated 2nd June 2026 passed by the Divisional Commissioner, Konkan Division in Entertainment Licence Appeal No. 81 of 2025, whereby the said Appeal preferred by the Petitioner against an order dated 10th October 2025 passed by the Deputy Commissioner of Police, H.Q-1, Mumbai, (R1), rejecting the Application for an entertainment licence to operate an orchestra at the Petitioner's premises, came to be dismissed.

3. The Petitioner is a private limited company incorporated under the provisions of the Companies Act, 2013. The Petitioner is engaged in the hospitality business. The Petitioner runs Magnus Bar and Restaurant at Navish House, S.V. Road, Khar (West) Mumbai (“the subject premises”). The Petitioner has all the valid licences to run the Bar and Restaurant (the establishment) at the subject premises.

4. On 16th May 2025, the Petitioner submitted an Application to Respondent No.2 seeking premises licence and performance licence to operate a live music orchestra under the provisions of Maharashtra Police Act, 1951 (“the Police Act, 1951”) and the Rules for Licensing And Controlling Places of Public Amusements (Other Than Cinemas)

And Performances For Public Amusement, Including Cabaret Performances, Discotheque, Games, Pool Game Parlours, Amusement Parlours Providing Computer Games, Virtual Reality Games, Cyber Cafes, Games With Net Connectivity Bowling Alleys, Card Rooms, Social Clubs, Sports Clubs, Melas And Tamashas Rules, 1960 (“the Public Amusement Rules, 1960”).

5. The Senior Police Inspector, Khar Police Station (R2) conducted a detailed site inspection and submitted a reasoned report to Respondent No.1 recording that there was no impediment for granting premises and performance licences to the Petitioner as the requisite conditions as prescribed under the Rules were met, and that Respondent No.2 had no objection to the grant of premises and performance licence for running the orchestra in the establishment. The Assistant Commissioner of Police, Bandra, Mumbai, had also issued a No Objection Certificate for the grant of premises and performance licence to the Petitioner.

6. Yet, the Petitioner claims, by the order dated 10th October 2025, Respondent No.1 rejected the Application on the purported solitary ground that, the grant of premises and performance licence to operate orchestra may lead to a law and order problem and thereby disturb the social harmony, without ascribing any reason to arrive at such conclusion. Neither any reference was made to the material on the basis

of which such an inference was drawn nor the basis of the said assumption was disclosed.

7. Being aggrieved, the Petitioner preferred an Appeal before the Divisional Commissioner, Konkan Division. By the impugned judgment and order, Divisional Commissioner dismissed the Appeal by simply reproducing the submissions of the parties and the order passed by the Competent Authority. The Petitioner claims, there was no independent evaluation of the merits of the case by the Appellate Authority. A bald observation was made that, the Petitioner did not comply with the provisions contained in Rule 108 of the Rules 1960.

8. Being further aggrieved, the Petitioner has invoked the writ jurisdiction.

9. An Affidavit in Reply has been filed on behalf of Respondent No.1. An endeavour was made to support the impugned orders as having been passed in conformity with the Rules, 1960. It was, *inter alia*, contended that the report of the Senior Police Inspector, Khar Police Station and Assistant Commissioner of Police, Mumbai, were recommendatory in nature. The Competent Authority was not bound by those assessments. In discharge of its statutory duties the Competent Authority was empowered to independently analyze the material and reject the Petitioner's Application for licence as there was genuine

apprehension of law and order problem, in the event licence was granted.

10. Reference has also been made to a Circular dated 27th July 2026 issued by the State Government, in Home Department, thereby restraining the Authorities from issuing fresh or renewing licence to operate an orchestra.

11. It was further contended that during the pendency of this Petition, certain complaints have been received from the private parties and a crime was registered at Khar Police Station vide CR No. 471 of 2026 for an offence punishable under Section 223 of the Bharatiya Nyaya Sanhita 2023 (“BNS 2023”) in relation to the subject establishment.

12. The Petitioner has controverted the contentions made on behalf of Respondent No.1 by filing an Affidavit in Rejoinder.

13. I have heard Mr. Bernardo Reis, the learned Counsel for the Petitioner, and Smt. V. R. Raje, the learned AGP for Respondent Nos. 1 and 2-the State, at some length. With the assistance of the learned Counsel for the parties, I have perused the material on record including the impugned orders.

14. Mr. Reis, the learned Counsel for the Petitioner, took a slew of exceptions to the impugned orders. Mr. Reis would urge, the impugned orders betray an intent to somehow reject the Application for the

premises and performance licences to operate an orchestra. The Competent Authority (R1) has not ascribed any reason, as such, for rejecting the Application on the specious ground that the grant of licence would lead to a law and order problem. However, as the matter progressed before the Appellate Authority and this Court, the Respondents have made efforts to gradually invent reasons for refusing the licence. Thus the order passed by the Competent Authority (R1) refusing to grant the licence on the ground that a law and order situation may arise, without spelling out any details, deserves to be quashed and set aside, for being sans reasons.

15. Mr. Reis further submitted that the order passed by the Appellate Authority also suffers from the vice of arbitrariness and unreasonableness. The Appellate Authority has simply extracted the contentions of the parties and the order passed by the Competent Authority and observed that the findings arrived at by the Competent Authority are proper. The Appellate Authority has also made bald observations that the Applicant did not satisfy the requirements of the Rule 108 of the Rules, 1960, and that the grant of licence would lead to law and order problem, without ascribing any reason.

16. Mr. Reis submitted that the Appellate Authority, has unjustifiably discarded the judgment of this Court in the case of **Shivaji Sambu**

Waghralkar Vs Commissioner of Police, Navi Mumbai, Maharashtra and Anr,¹ by simply observing the fact-situation in that case was different.

17. The non-application of mind by the Appellate Authority, Mr. Reis would urge, is evident from the observations in the ultimate paragraph of the impugned order that since the Petitioner has committed breach of the terms and conditions of the licence, action taken by the Competent Authority (R1) was justifiable. There was no question of the breach of the terms and conditions of licence as the Petitioner was seeking a premises and performance licence to operate an orchestra.

18. Mr. Reis placed strong reliance on the judgment of the Supreme Court in the case of **Hotel Priya, A Proprietorship Vs State of Maharashtra and Ors**² and a judgment of this Court in the case of **Shivaji Sambu Waghralkar (Supra)** to lend support to the submissions that the licensing Authorities are not free to refuse to grant the licence by exercising the powers in an unreasonable and arbitrary manner.

19. Per contra, Smt. Raje, the learned AGP, made a strenuous effort to support the impugned orders. It was submitted that since the Authorities have arrived at concurrent findings that the grant of licence to operate an orchestra would lead to a law and order problem, this Court, in exercise of its supervisory jurisdiction, need not interfere with

1 2026 SCC OnLine Bom 2409.

2 2022 SCC OnLine SC 204.

such orders passed on an objective assessment of the fact-situation as it obtains.

20. Smt. Raje further submitted that the Petitioner was provided an efficacious opportunity of hearing both before the Competent Authority and Appellate Authority. Evidently, the impugned orders have been passed in observance of the principles of natural justice and fundamental principles of judicial process. Therefore, such orders are not open for interference.

21. Smt. Raje further submitted that on the merits of the matter, since the Authorities have taken into consideration certain crimes that were registered against the directors of the Petitioner; that the operation of the orchestra would lead to unruly behaviour of the persons, who would frequent the establishment, and increased and unregulated traffic movement and the altercations with the neighbours and residents of the area, the inference drawn by the Authorities that the grant of licence would lead to law and order problem is required to be appreciated in the light of aforesaid factors. To this end, Smt. Raje, banked upon the grievances lodged by the occupants of two adjoining premises and the report lodged by Khar Police leading to registration of CR No. 471 of 2026 for an offence punishable under Section 223 of BNS 2023, against the Petitioner.

22. At any rate, Smt. Raje would urge, in view of the policy decision of the Government not to grant the performance licence to operate an orchestra, as documented in the Circular issued by the Government of Maharashtra, in the Home Department, dated 27th July 2026, the Authorities cannot grant licence to operate an orchestra. Therefore, the Petition deserves to be dismissed.

23. Before adverting to appreciate the aforesaid rival submissions canvassed across the Bar, it may be appropriate to have a brief resume of statutory provisions and Rules which govern the grant or refusal of the premises and performance licence.

24. Chapter IV of the Police Act, 1951 contains the provisions under the heading, "Police Regulations". Under Section 33 of the Police Act, 1951, the Authorities have been empowered to make rules for regulation of traffic and for preservation of order in public place, 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; 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*.

25. In exercise of the powers conferred under Section 33(1) of the Police Act, 1951, the Commissioner of Police, Greater Mumbai has made the Public Amusement Rules, 1960. Under Rule 2(k) the “premises” and under Rule 2(l) the “Public Amusement Performance” are defined as under:

(k) “Premises” means any place which is used or is intended to be used as a place of public amusement or any place other than a cinema theatre, wherein musical, dancing, dramatic, mimetic, theatrical or other performances or public amusement, exhibition or diversion or game are staged”

(l) “Public Amusement Performance” means a performance of dramas, songs, dances mimetics and similar other performance given in a place of public amusement or on any of the premises as defined under clause (i) of rule 2 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 and includes a Cabaret Performance, Discotheque and Games.”

26. Chapter II of the Public Amusement Rules, 1960 makes provisions 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 invite objections. Rule 5 of the Public Amusement Rules, 1960, provides for

grant of 'No Objection Certificate'. It reads, without prejudice to the authority of the Licensing Authority to refuse or grant licences for premises and performances under Rules 109 and 110 and 120 of those Rules, the Licensing Authority may grant in Form "C" a certificate to the Applicant that there is a no objection to the location of the premises at the site notified by the Applicant under Rule 3.

27. Under the scheme of the Public Amusement Rules, 1960, there is a necessity to have independent premises licence and performance licence. Chapter VIII of the Public Amusement Rules, 1960, subsumes provisions in relation to, "Premises Licence". Whereas Chapter IX governs, "Performance Licence".

28. Rule 107 proscribes the use of premises as a public amusement unless the person being the owner, tenant or occupier thereof, shall have obtained a premises licence therefor. Rule 108 prescribes statements and certificates that shall accompany an Application for premises licence. Rule 108-A incorporates the requirement that shall be fulfilled for grant of premises licence. Rule 110 empowers the Licensing Authority to refuse a premises licence.

29. In the context of the controversy at hand, it would be imperative to extract Rule 110 which reads as under:

"110. Power to refuse licence.— The Licensing Authority may refuse Premises Licence, if

(a) The premises appears to him/her to be likely to cause obstruction, inconvenience, annoyance, risk, danger or damage to the residents or passers by or create traffic problems in the locality or may harm national interest or cause law and order problem.

(b) If he is satisfied after such enquiry as he thinks fit that the applicant for licence of the premises in question is not fit or unsuitable to grant such licence.”

30. In the same vein, Rule 116, subsumed under Chapter IX underscores the necessity of performance licence. It provides, no person shall hold a musical, dancing, dramatic, mimetic, theatrical or other performances for public amusement, including Cabaret Performances, Melas and Tamashas, or any public exhibition or diversion or game, by whatever name called or provide amusement at any outlets in the form of Pool or Billiards Parlours, Computer Game Parlours, Virtual Reality, Game Parlours, Cyber Cafes, Bowling Alleys either on payment of fees, sale of tickets or on gratis (free of charge), unless and until he has obtained a Performance Licence from the Licensing Authority to hold such performance.

31. Rule 120 reads as under:

“120. 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 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 reference to personalities;
- (c) to wound the susceptibilities of any nation 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 (e) and (f).

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

32. As is evident, Clauses (a) to (f) of Rule 120 empower the Licensing Authority to refuse licence for the reasons specified thereunder. Clause (g) which is residuary in nature, provides that 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 any performance licence, except in the case of ground (g), whereunder he is enjoined to record reasons in writing, if the performance is considered to be objectionable.

33. In the light of the aforesaid regulatory regime, reverting to the fact of the case, it appears that the Competent Authority (R1) was persuaded to refuse the licence, in exercise of the power under Rule 110 though the specific rule was not referred. The Appellate Authority, in turn, though referred to Rule 108 of the Rules, yet refrained from

specifying as to which provision of the said Rule the Petitioner did not comply with. Thus, at best, the power to refuse the licence can be said to have been exercised by the Authorities under Rule 110 and Clause (g) of Rule 120 of the Rules, 1960.

34. If the order dated 10th October 2025 passed by the Competent Authority (R1) is perused, the solitary reason that is discernible therefrom is that, the grant of premises and performance licence might lead to a law and order problem and thereby disturb the social harmony. The order stops at that. It does not spell out any reason or divulge the material which would justify an inference that the grant of licence would lead to a law and order problem. Was it the *ipse dixit* of the Competent Authority (R1)? Was there objective material on the basis of which the Competent Authority (R1) could have formed such an opinion? Whether the Certificates annexed to the Application or the Report submitted by the Field Officer justified such refusal?, are some of the questions, on the anvil of which, the legality and justifiability of the said order was required to be tested.

35. Evidently, the Respondents do not profess to contend that the Reports of the Field Officer were adverse. On the contrary, in the Affidavit in Reply an endeavour was made on behalf of the Respondents to play down the Reports of the Senior Police Inspector, Khar Police Station and the jurisdictional Assistant Commissioner of Police, on the

premise that the grant or refusal of licence is ultimately in the discretion of the Competent Authority and those Reports were only recommendatory in nature and not binding on the Licensing Authority.

36. It would be contextually relevant to note that, the report submitted that by the Senior Police Inspector, Khar Police Station (Exhibit “E” to the Petition), makes it explicitly clear that all the requisite conditions for the grant of the premises and performance licences were fulfilled by the Petitioner. The Senior Police Inspector reported that, the establishment was not located in a crowded and densely populated area; though it was located in a commercial area. The width of the road in front of the establishment was more than 40 feet, i.e. 90 feet. No religious place or hospital or educational institute was located within the 75 meters of the establishment. No similar place of amusement existed within a radius of 75 meters. There was adequate provision for the parking of the vehicles of the customers. The premises was soundproof. And, thus, the Police had no objection to the premises licence and performance licence being issued to the Petitioner.

37. The position which thus emerges is that, on the one hand, the order passed by the Competent Authority (R1) does not indicate, even remotely, as to what weighed with the Competent Authority in refusing the licence on the ground that the grant of licence may lead to a law and order problem. On the other hand, the field report submitted by the

jurisdictional police indicates that the Application was in order, complied with the requirements under Rule 108 of the Rules, 1960 and the Police had no objection for granting the premises and performance licence.

38. Undoubtedly, the grant of licence is in the discretion of the Competent Authority. However, the exercise of the discretion cannot be said to be completely uncanalised and unbridled. The exercise of the power is regulated by the Rules. A mere *ipse dixit* of the Competent Authority that the grant of licence may lead to a law and order problem, without anything more, cannot be sustained. The refusal of licence without there being objective material to bring the case within the categories under which the Competent Authority is empowered to refuse the licence, would thus fall foul of the principles of reasonable and non-arbitrary exercise of power by the instrumentalities of the State.

39. In the order passed by the Appellate Authority, a reference was made to two crimes registered against the directors of the Petitioner, i.e. CR No. 504 of 2014 and CR No. 359 of 2015. The Petitioner joined issue by submitting that the prosecutions arising out of those crimes were quashed and set aside pursuant to an order passed by a Division Bench of this Court on 11th April 2023 in Criminal Writ Petition No. 4244 of 2016 and the connected matters and, thus, registration of those

crimes could not have been arrayed against the Petitioner. Copies of the orders passed in the said Writ Petition dated 11th April 2023 and consequential orders passed by the jurisdictional Magistrates disposing of the prosecutions arising out of the said CR No. 504 of 2014 and CR No. 359 of 2015, were placed on record. Evidently, the Authorities could not have referred to and relied upon the registration of CR No. 504 of 2014 and CR No. 359 of 2015 against the Petitioner and others as the prosecutions arising out of those crimes were already quashed and set aside by the Division Bench of this Court.

40. The third limb of resistance to the grant of premises and performance licence was premised on the complaints lodged by Dr. Chandreshwar Dode and Trilok Patel, dated 5th August 2026, making grievances about the purported unlawful and abusive behaviour of the customers who visit the Petitioner's establishment and the resultant nuisance to the adjoining establishments.

41. Evidently, those grievances were made after the passing of the impugned order by the Competent Authority and during the pendency of the challenge to the impugned order before this Court. The Petitioner has, in the Affidavit in Rejoinder, referred to the animosity between the Petitioner and Dr. Chandreshwar Dode on account of the dispute over use and occupation of the common passage/open space between two structures and the complaint purportedly lodged by one of the directors

of the Petitioner against Dr. Chandreshwar Dode leading to registration of the NC report.

42. I find substance in the submission of Mr. Reis that the grounds were sought to be progressively supplemented to justify the refusal of the premises and performance licence, where none were ascribed in the first instance.

43. 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 practice any profession or to carry on 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.

44. 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 an 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 can the operation of an orchestra or the staging at a live music performance be said to be inherently dangerous or injurious to general public.

45. In a different context, in the case of **State of Punjab Vs Devans Modern Breweries Ltd,**³ 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 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.

46. 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

³ (2004) 11 SCC 26.

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.”

47. 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 statutes 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.

48. To what extent, the Licensing Authority could refuse the performance licence, if the Applicant satisfied all other requirements solely on the basis of an unsubstantiated apprehension that the grant of

licence to operate an orchestra may lead to a law and order problem, 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 apprehension presumably premised on morality crops up for consideration.

49. In the case of **Indian Hotel and Restaurant Association (Ahar) and Anr Vs State of Maharashtra**⁴ 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,

⁴ (2019) 3 SCC 429.

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'. 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 Commmercium: 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.”

50. 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.

51. 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 **Indian Hotel and Restaurant Association (Ahar) and Anr (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.”

52. The Circular issued by the Government on 27th July 2026 restraining the Authorities from issuing performance licence to operate an orchestra/live musical performance, does not advance the cause of the submission on behalf of the State. It is well settled position in law that, executive instructions cannot supplant the statutory rules. They can supplement/clarify the statutory rules. Undoubtedly, the Government by issue of executive instructions under Article 166 of the Constitution of India, can supplement the statutory provisions/rules, in case of any ambiguity or fill in the gaps therein but such executive instructions cannot supplant the statutory regime which already occupies the field.

53. Thus, no mileage can be drawn from the Circular dated 27th July 2026 issued by the Government in support of the impugned order.

54. The conspectus of aforesaid consideration is that the impugned orders suffer from the vice of unreasonableness and arbitrariness in the exercise of the powers conferred under the Public Amusement Rules, 1960. The Authorities proceeded to refuse the performance licence despite the Petitioner complying with all the requirements on their *ipse dixit* that, the grant of licence will lead to a law and order problem.

Hence, the impugned orders deserve to be quashed and set aside, and the Petition deserves to be allowed.

55. Hence, the following order:

: O R D E R :

- (i) Petition stands allowed.
- (ii) The impugned order dated 2nd June 2026 as well as the order dated 10th October 2025 passed by the Licensing Authority refusing the performance licence stands quashed and set aside.
- (iii) The Licensing Authority shall grant performance licence to operate orchestra/live music performance to the Petitioner within a period of four weeks from the date of communication of this order.
- (iv) Rule made absolute in the aforesaid terms.

No costs.

[N. J. JAMADAR, J.]