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Case Comment: Indian Hotel and Restaurant Association (AHAR) vs State of Maharashtra & Ors.

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INTRODUCTION

Citation: (2019) 3 SCC 429

Decided on: 17/01/2019

Bench: Before A.K. Sikri and Ashok Bhushan, JJ.

Appellant: Indian Hotel and Restaurant Association (AHAR)

Respondents: State of Maharashtra & Ors.

FACTS OF THE CASE

In the year 2005, the government of Maharashtra and banned and prohibited dance performances in bars. The exception was hotels that had a rating of above 3 stars which is provided by Section 33 (A) and 33 (B) enshrined in the “*Bombay Police Act*”.

The reasoning for doing the same was that such dances were morally corrupt and obscene in nature. The effect resulted in the cancellation of licenses of all bars with dance performers. This led to the unemployment of more than 75,000 women dance performers. This led to the filing of petitions against the government before the High Court of Bombay.

The Bombay High Court ruled the decision and judgement against the government. The Government appealed as a result to the Apex Court and contended that the Bombay High Court had erred in its decision. However, the Supreme Court in 2013 upheld the decision of the High Court.

Instead of complying with the decision of the Supreme Court, the Government enacted legislation titled as-

1. "Maharashtra Prohibition of Obscene Dance in Hotels, Restaurants and Bar Rooms and Protection of Dignity of Women Act, 2016" (herein referred to as "the aforementioned act")
2. "Maharashtra Prohibition of Obscene Dance in Hotels, Restaurants and Bar Rooms and Protection of Dignity of Women Rules, 2016" (herein referred to as "the aforementioned rules") This piece of legislation had a similar intention and conditions to Section 33 (A) and (B) of the "Bombay Police Act."

These 2 pieces of legislation combined together were stringent and the conditions provided therein were impossible to abide by. Hence it resulted in no grant of license to any establishments operating in that sphere. Three write petitions were filed before the Supreme Court under Article 32 of the Indian Constitution. All 3 had similar issues and were hence heard together by way of a single judgement.

ISSUES

The Issues framed and discussed by the Apex Court were as follows-

1. The major issue discussed by the Supreme Court was to analyse the constitutional validity of the aforementioned act.

2. Whether section 6(4) of the aforementioned act violates Article 19(1) of the Indian Constitution?
3. Whether section 8(4) of the aforementioned act as opposed to the equality before the law under Article 14 of Constitution?
4. If the penal provisions in the aforementioned act under Section 8 (2) is against Article 14?
5. To what extent is Rule 3 of the aforementioned act, legal?

RULE

Article 14, Constitution of India - "A state cannot deny equality before the law or equal protection in eyes of the law to any person in Indian territory."¹

Article 15, Constitution of India - "This article does not make discrimination against any citizen only on grounds of sex, race, religion, place of birth, caste, or any of them."²

Article 19, Constitution of India:

- **Article 19 (1) (A)** - "This ensures that all Indian citizens have the right to freedom of speech and expression."³
- **Article 19 (1) (G)** - "This ensures that all Indian citizens have the right to practice or carry on any occupation, business or trade."⁴

Article 21, Constitution of India - "This article ensures that no person is deprived of his life or personal liberty except according to procedure established by law."⁵

Following Sections Of "The Aforementioned Act"

Section 2 (8) (I) - "This section defines 'obscene dance' as being intended to arouse the audience's prurient interest."⁶

¹ Constitution of India, art 14

² Constitution of India, art 15

³ Constitution of India, art 19(1)(a)

⁴ Constitution of India, art 19(1)(g)

⁵ Constitution of India, art 21

Section 6 (4) - "This section prohibited license to be granted under the act in places wherein a license for orchestra or discotheque is granted."⁷

CONTENTIONS FROM APPELLANT

1. The appellant contended that Section 6 (4) of the aforementioned act violated the basic tenets enshrined under Article 14 and Article 19 (1) of the Indian Constitution. This section did not allow the grant of license simultaneously to both dance bars and discos. The contention was that such a demarcation had no rationale and was not based on "intelligible differentia."
2. It was contended that the definition of obscene dance as under Section 2 (8) of the aforementioned act was vague and not precise. Such a definition was open to various different interpretations and could be riddled with subjectivity. Obscene Dance is made an offense under the aforementioned act and such vagueness is opposed to the Rule of Law.
3. The Indian Penal Code age-old legislation already had provisions that categorized obscenity as an offense with a punishment of 3 years which was different from the punishment under the aforementioned act. There existed a clear conflict between the central legislation and the state legislation. In addition, it is against equality under Article 14.
4. As per 8 (4) of the aforementioned act, giving any form of coin or currency was an offence for dancers but not for waitresses or singers. It was contended that this could be compared to receiving appreciation in the form of tips and could not be constructed to be an offence. In addition, it violated Article 19 (1) (g) of the Constitution as such tip forms a major portion of the earnings received by such dancers.
5. Part A, Condition 11 of the aforementioned rules stipulated that such dance bars could not be located within 1 km of any religious institutions or educational institution. In reality, this seemed illogical as in a city such as that of Mumbai, it would be difficult to find such a place.

⁶ Maharashtra Prohibition of Obscene Dance in Hotels, Restaurants and Bar Rooms and Protection of Dignity of Women Act 2016, s 2(8)(i)

⁷ Maharashtra Prohibition of Obscene Dance in Hotels, Restaurants and Bar Rooms and Protection of Dignity of Women Act 2016, s 6(4)

6. As per Part B, Condition 20 makes it compulsory to install CCTV Cameras. This is considered to be a blatant violation of privacy. It was contended that such provision is against Articles 14, 21, and 19 (1) (a).
7. The appellant contended that the claim made which insinuated that minors are forced to dance and engage in prostitution is not supported by any hard facts. It was provided that women dancers earn and as a result do it out of free will.

CONTENTIONS FROM RESPONDENT

1. The respondent defended that 2 (8) of the aforementioned act defining 'obscene dance' and connoted that 'prurient interest' had a clear meaning as found in leading English dictionaries. Such a phrase can also be found in the Indian Penal Code- Section 292 and hence the aforementioned act was correct in classifying it as an offence.
2. The respondents pointed out that the aforementioned acts and rules were not arbitrary and neither unreasonable. Hence the intention of the legislation can be viewed from the preamble which mentions clearly that the act was to protect and keep women safe.
3. The respondents submitted that the purpose behind Section 6 (4) of the aforementioned act was to avoid obscene dance by way of imposing stringent conditions. The same argument was given for the keeping stage separate from the disco.
4. It was submitted that Section 8 (2) of the aforementioned act is an offence separate from the one under Section 292 of the IPC and hence there was no conflict in the two legislations.
5. A submission was made that section 8 (4) of the aforementioned act was enacted keeping in mind the cultural ethos of the country. By way of showering currency it is a manner of inducement and hence goes against the very foundation of morals found in section 354 A of IPC.

RATIO

The Supreme Court disposed of the writ petition and held the following-

1. The court held Section 2 (8) (i) of the aforementioned act to be valid as there did not exist any vagueness in the definition of obscene dance.

2. The offence under 8 (2) of the aforementioned act was valid as it was not similar to what was enshrined under section 294 of the IPC.
3. Section 6 (4) of the aforementioned act was found to be riddled with arbitrariness and was not in tune with the purpose and was struck down.
4. Part A, Condition 11 was quashed. Liberty was granted to dance bars to be set up without the restriction of more than 1 km distance from religious and educational institutes.
5. It was held that 8 (4) of the aforementioned act was to be read along with Part B, Condition 6,7,8. Any sort of money towards a dance performance should be given personally and not thrown or showered on the performer. In addition, it is not correct for the State to prescribe the mode of giving such a tip as it was exclusively between the :
 - *performer and employer and*
 - *performer and visitor.*

This led to the provision of tips given only if it's added in the bill to be struck down.

1. The court held Part B, Condition 2 with reference to remunerations to be put into the bank account as valid. However, the provision relating to employment on monthly basis was removed as it violated Article 19 (1) (g) of the Indian Constitution⁸.
2. The provision relating to the operating hours up to 11:30 pm for dance performances in such dance bars was held to be valid. The court stated that merely because other establishments were open till later, does not inhibit the right of the government to restrict the timings of dance performances. This was also considered to be 'reasonable time' as viewed by the court.
3. Part B, Condition 12 prohibited liquor from being served in dance bars. The court stated that this was unreasonable as the inference that people would misbehave with the performers under the influence of alcohol is a type of situation that could also take place even in restaurants or bars.
4. Part B, Condition 20 which mandated the installation of CCTV Cameras was struck down as it was found to be infringing the fundamental right of privacy and is against Article 14, 21, 19 (1) (a).

⁸ Constitution of India, art 19(1)(g)

The Court based the reasoning on the “*K.S Puttaswamy Case.*”

ANALYSIS

The apex court first discussed whether there existed any vagueness in the definition of ‘obscene dance’ as under Section 8(2) of the aforementioned act. The court referred to the ‘Concise Oxford Dictionary for the same. It came to the conclusion that this section was a mirror of that enshrined under Section 294 of the IPC and was hence no ambiguous in its wording. However, when deliberating the validity of Section 6(4) of the aforementioned act, the court was not satisfied by the submission of the appellant in the interpretation of the provision. The court stated that the penal provision of imprisonment and fine varied from that contained under Section 294 of the IPC. Hence the clause was upheld as it did not violate Article 14 and was intended to prevent the exploitation of women.

The court went in-depth into the tip given to dance performers as well as throwing and showering money or coins. The court upheld the respondents' submissions and the validity of this provision as the act of throwing money or coins is a form of inducement and is not in tune with the cultural ethos and the intention of the legislation. However, personally handing over tips in the form of currency or anything with monetary value was acceptable by the court. In addition, they quashed the requirement to possess good character and no existing criminal record for the past 10 years as under Rule 3 (3) (i). This was based on the reasoning that the language used in the provision was not precise and was capable of wide forms of interpretation. For instance, the vagueness in ‘criminal record’ was questioned as being based on the mere filing of an FIR or being convicted in a case.

When addressing Part B, Condition 2 the court upheld the provision of money being transferred to the dancer’s bank accounts as this would ensure transparency in payment and eliminate any chance of exploitation that could take place. However, the provision relating to employment on a monthly basis did not pass judicial scrutiny. This is because this restricts the mode of employment made available to the employer. Other modes such as contract-based employment

could have been adopted. In addition, it restricts the right of a dancer to perform in one establishment only thereby violating Article 19 (1) (g).

The Supreme Court had referred to a plethora of cases in reasoning and backing its decision. It referred to those aspects of "*State of Maharashtra vs Indian Hotel and Restaurants Association*"⁹ which held sections 33 A and 33 B of the Maharashtra Police Act to be against the Constitution. The provisions of the impugned act which were in tune with these sections were struck down by the apex court on similar lines. The court dwelled on what extent can the State impose on its citizens 'morality. The Court cited "*Khoday Distilleries Ltd. vs State of Karnataka*"¹⁰ for the same and viewed that a person cannot deal in obnoxious substances on the ground of public morality. The court viewed that a State has the power to completely prohibit trade in liquor. However, a court cannot interpret freedom, equality, or commerce of the Indian Constitution in a manner that takes away rights on the ground of morality.

The Court viewed the aspect of "injury to morals" in the case of "*State of Bombay vs R.M.D. Chamarbaugwala*"¹¹ and stated that gambling could not be viewed in the same light as trade or commerce and hence cannot be considered a fundamental right under Article 19 (1) (g). The court expressly rejected the submission that dance bars were against the morals and public interest. This is because the State lacked empirical data to prove that such an activity was opposed to public morals and was riddled with corruption. Hence, the court concluded by viewed the aforementioned act and rules as a cloak to bring regulation to dance bars. The provisions enshrined in the legislation were viewed to be impossible to perform and hence no established was issued a license. The Court viewed it as being restrictive in nature. Hence the court struck down those provisions which were unconstitutional.

⁹ *State of Maharashtra v Indian Hotel and Restaurants Association* (2013) 8 SCC 519

¹⁰ *Khoday Distilleries Ltd v State of Karnataka* (1995) 1 SCC 574

¹¹ *State of Bombay v RMD Chamarbaugwala* AIR 1957 SC 699

CONCLUSION

The case at hand had to be analyzed in a holistic manner as it was delicate in nature keeping in mind the dependence of a large number of women dancer's jobs. One can view the decision of the court as being balanced between the contentious legislation as well as the interest of the public. To construe all forms of dance performances as '*obscene*' was not a correct approach in thinking and the court rightly held the provision relating to obscene dance as valid as there was no vagueness. Similarly, the court quashed the provision relating to licensing as it violated Article 14 of the constitution.

The judgement is indeed progressive. Those aspects which were violative of the ground norm that is the Constitution were struck down. Whereas, certain provisions were upheld wherein it would ensure the protection and safety of women from being exploited. This judgment ensures a win-win situation, wherein both freedoms of women and freedom of women to employment and profession are granted.