

A

[2022] 16 S.C.R.322

HOTEL PRIYA, A PROPRIETORSHIP
v.
MAHARASHTRA STATE & ATOPPASING.
(Civil Appeal No. 1459 of 2022)

B

FEBRUARY 18, 2022

[K. M. JOSEPH AND RAVINDRA BHAT, JJ.]

- C *Licensing amasung Performance for Public Amusement including Cabaret Performance, Melas and Tamashas Rules, 1960–rr.108,109,120,122 amasung 123–Constitution of India –Article 15(1), 19(1)(g)–Licensed barsingda orchestras amasung bandsda perform toubada singnariba conditionsna, atei yaoraga, asidagi henba yade haiba gender mashing ama thamlammi,–Singnaba da–High Courtna*
- D *conditions chummi haina rai takhi–Appeal toubada, asuma rai tarammi: Barsingda natranga establishmentsingda perform touba nupising, houjikki appeallants gumna, samajgi makhal amagi classda yaai haiba stereotypical mityengdagi shingnariba conditions lakpani–nupibu ngak-selli haina claim touriba khongthangnsing asi asengbadi Art.15(3)bu mang-takhalli–Athingba asina Art.15(1) amasung Art. 19(1)(g) bu hakthengnana thugai–Akonbada pallibagi folna performers mathakta license pairiba animakta –1960gi Rules amasung atoppa mari leinaba provisionsgi makhada license piba barsingda , nupi natranga nupa masing orchestra amasung bandsda perform toubada gender cap thamba conditions void oi–Adubu, apunba performers mashing, natranga, stage gi pakpa chaoba(madugi mathaktta performance*
- F *toubada adubgi matangda regulation toubada adu athingbani haiba yade; adugumba conditions shemliba Commissioner natranga governmentgi authoritygi ainna piba toubada ngamba mathougi manungda makhoi leiba yai–Aduna, performance amada apunba performer mashing nipan henba yadrasu, composition(haibadi, nupi loinamak, nupi ayamba natranga nupa, natranga onna teinana) adu combination ama hekta*
- G *oiba yai–singnariba judgment kaklammi–Maharashtra Police Act,1951–ss.2(9), 2(10), 33(1), 33(2), 162(1) & 162(2).*

Appeals yabiraduna, Courtna

- H **Rai tarammi: 1.1 Houjikki case asida fongdokliba ayetpasing, madudi miyamgi fanabagidamak, nupigi yaifaba hennaba oinaba athingbasing tangai fade, nupigi human trafficking, amasung makhoibu exploitation**

touba thingnaba, amasung madudi athingbasing asi miyamgi A
 lamchat shajat fanabani haibasi hanna hanna taraba ngaktani,
 amasung mapung fana kakle. Hanna kakkhraba submissions
 amuk hanna haiba nattana, karamna orchestra nattraga bandda
 gender cap thambasi regulatory oi haibasi statena maromdomda
 chummi haiba ngamde. Court asigi tang 02.03.2016gi order (Writ
 petition (C) No.793/2014 da)na record tourammi madudi
 conditionna stage(performance tougadaba stage) gi area B
 10ft.x12 ft. size dagi henba yade “Excise Departmentna FL.-III gi
 approve touba plangi matung inba, restaurant amasung permit
 room area marakta non-transparent partition leiba restaurant
 amasung permit room.” Performergi khwaidagi yamba mashing
 mari oi haina courtda khanghallammi. Enclosure (120 sq.ft.)
 aduda instrumentalists yaobana, khwaidagi yamba performergi
 apunba masing houjikki petition asida nipan oibana, maram C
 chade haiba yaro, order aduna troupe nattraga bandgi gender-
 cap khannanaba tanja leikhide. [Paras 39, 40][344-C-F]

*Maharashtra State & Atoppa v. Indian Hotel
 amasung Restaurant Association &
 atoppasing. (IHRA-I) (2013) 8 SCC 519 : [2013]
 7 SCR 654; (2015) Indian Hotel amasung
 Indian Hotel amasung Restaurant Association
 v. Maharashtra State (IHRA-II) 16 SCC 100;
 Restaurant Association & Atoppa v.
 Maharashtra Rajya & Atoppasing. (IHRA-III)
 (2019) 3 SCC 429 : [2019] 1 SCR 371- referred
 to.*

1.2 Appellants gumna bars amasung establishmentsingda
 perform touba nupising samajgi karigumba class amada lei haiba
 stereotypical mityengdagi shingnariba gender-
 cap(i.e.,performance ama hektada, nupi mari amasung nupa
 mari) thokpani. Nupisingbu *ngakpinaba* thamba athingba makha
 tana chatnabagi respondentsna piriba maramsing, court asigi
 mot oina, nupisinggi aspiration sihallagani haiba charge adu F
 mayoknari. Statena karigumba nupisinggi safetygi matangda
 tashengna wabirabadi, *Anuj Garg na* sengna utkhiba adumna,
 statena makhoina thabak tounabagi situation conducive
 oihanba, makhoibu thabak touhanbagi kanna hotnabiba mathou
 tai, madu oidanaba touba, amasung makhoigi apamba G
 khalhandaba nattaba. Ngakpi-senbinaba gi claim touriba
 measures asi asengbadi Article 15(3) kayhalli asuman makhoina
 special provision haina uhallaga amasung nupisingna makhoina
 apamba thabak khanjaba yahandaba nattraga makhoina H
 khanjaba ngamhande. [Paras 42, 46] [345-A; 347-E-G].

A

Anuj Garg & Atoppasing v. Hotel Association of India & atoppasing (2008) 3 SCC 1 : [2007] 12 SCR 991-relied on.

B

1.3 Houjikki case asida, apunba performers masing, natranga stagegi (madugi mathakta performance pangthokpa yaba) pakpa chaoba regulate touba athingbani haina takpa yaroi; makhoidu asigumba conditions semliba commissioner natranga governmentgi authority gi legitimate domaingi manungda leiba yai. Court asigi conclusion amasung findings matung inna,

C

athingba si genderdani, gender gi basisda performergi masing areppa masing cap thahmbagi wakhalni. Athingba asina Article 15(1) amasung Article (19)(1)(g) *directly* thugai-akonnbagi provoisongi effectsi performer amasung license owner animakki yaoi. Masigi findings yenglaga, condition thamliba adu amasung madu

D

unenforceable amasung void oi haina rai taraba question adu “law” oibra haina address touba tangaifadaba oide oina courtgi opinion oi. Court asigi authorities na hanna hanna maru oi haikhiba maramna, genderda base touraga singnaba lakladi, singnariba practice natranga rules natranga norms adu historical prejudice, gender

E

stereotypes amasung paternalism da yaoba oibra haibadu judges na kupna yengba mathou tai. Samajda asigumba wakhallongi mafam leite; hanna nupakhahtagi khannaramba thabaksing, armed forcesda thabak toubagumba, houjikti oidre haibasi ikui kuidana lakkhiba thoudoksingna takli. Mannana, gender cap thamba

F

singnariba conditionsing court asina void oi loui. Sangna makha tana leiraklaba amasung kortangi ayakpa makhol mamanggi judgmentsna tuminna leihankhiba adu houjikki judgment asina tuminna leihangani. Singnariba judgment asi kakle. Rules, 1960 amasung mari leinaba provisions gi makhada license piba barsda orchestra

G

amasung bandda perform toubagi nupi amasung nupagi mashing gi gender cap thamba conditions void oi haina laothokle. Performance amada performer oibagi apunba mashing nipan henba yadrabasu, composition (haibadi, nupi loina, nupina natranga nupana ayamba, natranga

H

onna teinaba) combination adudi ama hekta oiba yai. Appeals yabire, adubu cost gi matangda order pidre. [Paras 47-49][347-H; 348-A-F].

Joseph Shine v. Union of India (2019) 3 SCC 39 : [2018] 11 SCR 765—followed. A

Karnataka Live Band Restaurants Association v. State of Karnataka (2018) 4 SCC 372 : [2018] 1SCR 533—distinguished.

C.B. Muthamma v. Union of India (1979) 4SCC 260 : [1980] SCR 668—relied on. B

Bijoe Emmanuel & Atoppasing State of Kerala amasung Atoppasing (1986) 3 SCC 615 : [1986] 3 SCR 518; *Union of India v. Naveen Jindal*(2004) 2 SCC 510 : [2004] 1 SCR 1038; *State of Punjab v. Devans Modern Breweries Ltd. & atoppa.* (2004) 11 SCC 26 : [2003] 5 Suppl. SCR 930—referred to. C

Case Law Reference

[2013] 7 SCR 654	referred to	Para 32	D
[2019] 1 SCR 371	referred to	Para 34, 35, & 37	
[2007] 12 SCR 991	relied on	Para 43 & 46	
[1980] 1 SCR 668	relied on	Para 43 & 46	
[2018] 11 SCR 765	followed	Para 44	
[1986] 3 SCR 518	referred to	Para 37	E
[2004] 1 SCR 1038	referred to	Para 37	
[2003] 5 Suppl. SCR 930	referred to	Para 34	
[2018] 1 SCR 533	distinguished	Para 41	

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1459 of 2022.

2010gi Writ Petition No. 7962da Bombay High Courtgi Judicaturena tang 06.05.2011da taba Judgment amasung Orderdagi. F

Loinana

2011gi Civil Appeal Nos.1460 amasung 1461.

Prasenjit Keswani, Satyajit Saha, Upmanyu Tewari, Mrs. V. D. Khanna, Manoj K. Mishra, Umesh Dubey, Prateek Som, Alok Pandey, Dr. Bheem Pratap Singh, Advs. Appellantgidamak. G

H

A

Sachin Patil, Rahul Chitnis, Aaditya A. Pande, Geo Joseph,
Vivekanand Singh, Advs. Respondentsinggidamak.

Courtgi Judgment

S. RAVINDRA BHAT, J. na pibirammi.

B

1. Leave pire. Tang 12.09.2009 gi ordergi makhada thamba conditions uphold toukhiba Bombay High Courtgi judgment (amsung madugi matungda lakpa order ama)¹ adudagi masigi appealing tharakpani.
Facts gi shamlappa

C

2. Appellants asi changfam thokpa licenses/permissions paiba restaurants amasung bars mapu oiba natraga operate touba misingni. Makhoigi mafamsingda orchestra performances yamna toina pangthokpa toina thokpa wani. Aduna, makhoibu "*Orchestra Bars*" mingda khangnei. *Asigumba feature leibana*, Maharashtra Police Act, 1951(matungda "Act, 1951") gi makhada semba Licensing amasung Performance for Public Amusement including Cabaret Performance, Melas and Tamashas Rules, 1960(matungd "Rules, 1960")gi makhada Premises amasung Performance Licenses loubu tangaifade. Brihan Mumbaigi Police Commissionerna Act, 1951gi Section 33 (1)(w)(i) amasung (w)(ii), Section 162(1) amasung punna paminnara, Rules, 1960gi Rules 108A, 109, 118, 207 amasung 209na piriba powers shijinnaraga tang 12.09.2009da order thoktuna houjik leiramba Premises License da palliba conditions adugi mathakta conditions kaya hapchillammi. Condition kharadi petitionerna W.P. No.7962/2010da singnarammi amsung mari leinaba potta. Adubu, hearinggi matamda, singnaribadu makhagi conditionsinggi manungda oirammi:

F

- (1) Permitted stage da nupi singer /artists marikhaktang amasung nupa singers/artists marikhak leiba license paibada yarammi.
- (2) Artists nipan khaktang permitted stageda leiba yarammi (nupa mari amasung nupi mari).

G

3. Particular artists mashing identification touba natraga artists, natraga artists mashing athingba, nupa natraga nupi oirasu, adugi Act, 1951 nttraga Rules, 1960da yumfam yaode amasung Indiagi Constitutiongi Article 14 amasung Article 19(1)(g) thugai haina appellantsna High Courtda yetlammi.

H

Act, 1951gi provisions amasung madugi makhada semba rulesda conditions thamnaba power piri haiduna Commissionerna thamba

¹Dated 6th May 2011 in W.P. No. 7962/2010 amasung connected cases; as well as the judgment and order dated 19.12.2012 in W.P.2883/2012, which had followed the decision in the judgment dated 6th May, 2012.

4. conditionsbu challenge toubadu kaklammi. Orchestra bars operation toubada changdaba yadraba conditions issue tounaba commissionerda magi aningba matung inna thamba yai hainasu rai tarammi. Commissionerna mangonda piba powergi manungda condition thambani haina High Courtna maram aduna writ petition reject tourammi.

A

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Partysinggi Submissions

5. Singnariba conditionda establishmentna artists nipan khakta engage tounaba amasung makha tana, indaba yadaba maongda, nupa mari amasung nupi mari khakta haina, athingba thamba adu Constitutiongi Article 14 amasung Article 19(1)(g) thugai haina Mr. Prasenjit Keswani amasung Mr. Manoj K. Mishra, appellantgi learned counselna hairammi. Performergi mashingda athingba thamba, makha tana orchestral combinationda performergi genderda athingba thambasi performergi rights loinana organisergi rights, haibadi bar natraga entertainmentgi mafam adugi mapugi rights athingba thambani haina counselna yetlammi. Nupa khaktagi band orchestra natraga nupi khaktagi band natraga orchestras natraga tongan tonganba permutationna shaba ama hekta oiradi, mashinggi athingbana bandda sharuk yabada athingba pullap thambagi mahei oigani. Masi mapungfana maram chadaba oigani amasung Article 19(g) thugaigani. Article 19(6) gi makhada leiba maram chaba athingbagi clauses aduna asigumba conditionsing kannaba ngamoi haina hairammi.

C

D

E

6. Fangnaba talliba objects hairiba aduga conditionsga mari leinade haina appellants na hairammi. Artistic performance, asigumba, orchestra natraga single band performanceda, performersgi masing amasung gendega mari leinana tongan tonganba permutation amasung combination leiba yai haina taklammi. Performergi composition asi band natraga group aduna makhoigi business adu karamna organize tougani haibaduna lepkani. Masi karamba music play khongbage, madu kayamna popular oina pamnana tabage, karamba performer popularity leibada makha ponli. Orchestra bandda strict amasung rigid numerical division, nupa nupi masing mannana yaogani haibasi maram chaba basis natte. Counselna yetlammi madudi karigumba situation amada, item ama natraga piece amada performer nupa lina yaoba yai, natraga nupi lina, natraga, nupa khara amasung nupina masing yamba, natraga handoktuna yaoba yai. Transgender misu participation toubayai. Stageda matam amattada leiba yaba performergi mashing nipandagi henba yade haibadu yetnadana,

F

G

H

- A gender amagi mashing asuk oigadabani haina insist toubadi maram chade amasung fongna arbitrary oi. Asigumba condition yaoba Plenary enactmentgi rule nattraga provision adu justify touba yaro amasung aning aningbada toubani haina kakkani haina learned counsel na hairammi. Masina classificationgi test fail oini.
- B 7.Orchestra performance bu govern touriba licensengi conditionsna artistsgi mashing nattraga gender athingba thamba asi pernicious oi haina counsel na talkshillammi. Petitionerna court asigi *Maharashtra State & Atoppa v. Indian Hotel amasung Restaurant Association & atoppasing*², (matungda “IHRA-I”) amasung *Indian Hotel amasung Restaurant Association v. Maharashtra State* (matungda “IHRA-III”)³ caseda takhiba
- C wayensing pallammi, ammasung court asida takshillammi madudi public moralsda(dancing bars thingduna) statena piba arguments loudadaduna,”*dancing in bars res extra commercium oide haina lepkhiba*” adu rule toukhi. court asida takshillammi madudi
- 8.Public order, decency, nattraga afaba amasung morality nattraga miyamgi
- D fanabagidamak, musical, dancing, mimicry, nattraga miyamgi harao taramnaba touba performance licensing nattraga controllingga mari leinaba licensengi amasung public amusement nattraga entertainmentgi mafam control tounaba rules semnaba Police Commissionerda Section 33(1)(w), (wa)(i) amasung (wa)(ii)na power pi haibasi apppellants hairammi. Public order, decency, nattraga morality nattraga general public gi interest da
- E artistsgi employment amasung asigumba performanceda artists gi amasung audience gi conduct regulate tounaba mathakki provisionsda rule sembagi power yaori. Commissionergi powersing singnade. Rules nattraga ordersgi khaktana controlling amasung licensing tougani haibasi provisionsing paraga khanghi haina appellantsna kanna hairammi. Commissionergi power leijarabasu, adugumba powerdu Section 33(2)(ii) amasung Section 33(6)gi
- F makhada shijinnagani. Section 33(2)(ii)gi makhada Sub-section (1) gi clauses makhada rules semba, hongdokpa, nattraga kakpa/handokpa[clause (a) amasung (c)] yaodana, government adugi hanna ayaba lougani; amasung Section 33(6) makhada- rules hongdokpada madu hanna fongdoknaba hairi. Maram aduna, rule khaktana licensing amasung controlling touba yai, amasung executive instructions/decisionna yade.
- G 9.Commissionergi powersing Rules, 1960gi Rules 108, 108A, 109, 118, 120, 121, 122, Form-D amasung Form-Ena govern toui haina yetlammi. Rule, 1960 gi Rule 108-Ana Orchestra Performanceda
- H

²(2013) 8 SCC 519.

³(2019) 3 SCC 429.

Establishmentsna engage touba yaba artistegi mashing natraga asumba A
artistegi gendergi athingba haina appellantsna yetlammi. Makha tana,
Sections 108A, 120 amasung 122 gi makhada piba licensesgi conditionsna
public interestda, nupigi lembe, public order, amasung public moralsgi
norms semle. Court asina rules asi khanaraga *IHRA-I* da masigi statutory
regime asi nupigi dignity safeguardtoubada sufficient oi haikhi (Paras 127,
128, 130, 131, 132). Actgi Section 162 na Commissionerda condition impose B
toubagi power pide, piriba license aduda conditions amasung restrictions
specify tougani madugi makhada license pibani haina envisage tourammi.

10.Rule 109 khannaduna, appellantsna hairammi madudi Licensing
Authorityna Rule 109bu artha handopa yahanduna Commissionerda,
mangonda piba discretion shijinnaraga, condition ama hekta impose touba C
ngammi hairabadi, madugumba power adu ka henba delegation oibana
afaba oiroy. Rulena Article 19(1)(a) amasung 19(1)(g)na piba fundamental
rights curtail touba ngamde, hairiba Rule adugi makhada thamba conditions
executive instruction oina leibana, makhoina Article 13(3)(a) amasung
Article 19(6)piba Fundamental Rights enjoyment touba curtail touba yade,
executive instructions Article 13(3)(a) gi meaningda law oina loudaba D
maramna, amasung Article 19(6)gi purposegi damak. Court asigi *Bijoe
Emmanuel & Atoppasing v. Kerala State amasung Atoppasing*⁴ amasung
*Union of India v. Naveen Jindal*⁵ da pikhiba judgmentsda reliance
thamlammi. Aduna, artists mashing amasung makhoigi gender da athingba
thamba lawgi basis leite.

11.General public gi interestsda, public morality pak chaona fagatnaba,
nupsingbu ngakpinaba, makhoigi working condition fagatnaba, orchestra
barsna situation adugi khudongchaba loudanaba, amasung nupi artists
amasung waitressbu exploit toudanaba numerical restriction thamba justify
tounaba Statena haiba reasoning adu kanna yetladuna, appellants piriba
reasoning achumbada yumfam oide haikhi. High Courtna makhoina haibadu F
yabiramlasu, Court asina *IHRA-I* da takhiba wayengi matung inna, madugi
reasoning adu makha tana acceptable oide. Act, 1951gi Sections 33A
amasung 33Bna liquor barda jagoi saba mapung fana thingkhi, adubu, clubs
amasung three starred hotels amasung henna wangba establishmentsda
yaba adu *IHRA-I* da yetnarammi. Court asina asigumba provisions adu
michang mikhai nai amsung Article 14 thugai haina rai takhi, amasung G
liquor barsda dancing

H

⁴(1986) 3 SCC 615

⁵(2004) 2 SCC 510

- A pumthing thingba adu Constitutiongi Article 19(6) makhada reasonable restriction oi haina justify toude. Houjikki casedasu same logic apply toubana haina hairammi maramdi band yaoba yabagi entitled touba performer kaya performergi mashingda athingba thamlibasina yaoba yahanloi. Masina performersgi business amasung occupation regulate touhalli, amasung madugi arthada, Maharashtra
- B apumbada leiba barsda, bandsingda gender amagi oiba performers mashing kharadi yaohande haibasi oinaba makhoina disproportionate burden ama pure. Aduna, performergi masing genderda limit touba asi rational basis leite, henmalli, amasung aduna maram chade.
- C 12.Public morality ngakpaci interestda athingba darkar oi haiba statena yetliba adu khumladuna, hairiba judgments aduna masigi maramda pak chaona neinei haina makha tana taklammi. Amuk henna, samajgi moralitygi standards asi matamga linana hong, aduna karigumba activity ama immoral oi haina matam amada loubadu,
- D atoppa matam amada adumna loudaba yai. Court asina dance performancegi matangda khannarammi amasung ching lemna shaba jagoidi samajna accept toui amasung kanamatana madu yetfam thokte. Immoral oide haina samajgi standardna yaba practice adubu statena mashagi wakhalda immoral oi haina samajada namduna chatnanaba touba yaroi amasung adumna social control toubagi exercise yaroi haiba observationgi mateng lourammi. Henna makha tana, asigumba legislation asi constitutiongi provisions amasung courtna yaba oigadabani. Prohibited activity thingnaba amasung public moral shokhalli haiba maramda challenge touriba condition adu justify touba yaroi haina yetlammi.
- F 13.IHRA-IIIIna Prohibition of Obscene Dance in Hotels, Restaurants and Bar Rooms and Protection of Dignity of Women(working therein) Act, 2016(Act of 2016)bu kakhiba judgmentgi mateng lounaba learned counselna hotnei. Statena provisionsing adu intelligible differentiating yumfamdada justify tounaba hotnaba amasung asigumba establishmentsda perform touriba nupising deprived backgroundsdagini amasung makhoigi apambagi mayokta trafficking touba amasung namduna bar dancing yaohanbagi vulnerable oibani haiba argument adu maram chade haina rai tai haina counsel a thinduna taklammi. Athingba thamliba aduna Police Actgi Statement of Objects and Reasons adubu fangnaba mateng pangde haina
- H mannaba maongda hairammi.

Numerical restriction thambana public order leihalli haiba strategi A
case kankhatli haiba utnaba material amatta recordda
thamkhide.

14.Orchestra barsing dance bars gi anouba form amani, hanna
dance barsda thabak tourambashing houjik orchestra artists
oina perform toui haibasi legislationgi history na utli haina B
resopondentsgi yetladuna Mr. Sachin Patilna hairammi.
Nupisingbu akampet oiba jagoi khuthek touhanduna amasung
customersingga nupa nupigi mari leinahanduna mafamsing
asina makhoibu exploit toui. Article 15(3)gi makhada nupisinggi
safety amasung micham miyamgi fanaba nupi marikhak leibagi
condition thambani. C

15.Apunba oina orchestral shows touba 254 establishments lei
amasung makhoigi manungda ahumna(houjikki appellants)
conditions adu singnari haina yetlammi. Establishments
ahumsigi mathakta criminal case kaya file toure. Hairiba
conditions singdu artist amana natraga artistsgi associationna D
singnaba leite haina counselna makha tana hairammi.

16.Mathangda, shingnariba conditionsna Article 14 thugaide
haina respondentna hairammi. Intelligible differentia da
yumfam oiba reasonable classification amasung asigumba lawna
fangningliba pandam natraga executive measure aduga E
differentiaga maramchaba mari leinarabadi Article 14 na yai.
Statena nupigidamak special provisions semba Article 15(3) na
yai. Article 14 thugainaba condition ani fulfill touba tai.
Ahanbada, aggrieved oiba adubu ateidagi tonganna treat toubi
amasung similarly situated midagi khetnana treat toui;
anisubada, wakhal khandadaba amasung chummi haina takpa F
yaba yaodana asigumba treatment adu rational basis yaodana
amasung justification yaodan touoi. Houjikki case asida,
establishments 254da conditionsing chatnei. Nupi masing
hanthana permit touba haiba case natta natte natraga onana
teinana; Establishment khudingda nupi masing mannana
performance khudingmakta nupi masing mannana engage G
touba yai. Athingba thambasi nupisinggi fanaba amasung
makhoibu exploit touba thingnabani. Artistsda nattana
instrumentalists lei haina hairammi.

17.W.P. No.793/2014(Indian Hotels and Restaurants
Association, appellantssing madugi member oiramba) da, H
petitioner-Associationna detailed discussion matungda jagoi
shabi mashinggi condition yakhi haina respondentsna

- A takshillammi. Court asina tang 02.03.2016da Writ Petition No.793/2014da pass toukhiba order adu pallammi. Court asigi order na performance tougadaba stagegi pakpa chaoba (10 ft.x12 ft.) amasung apunba artistsgi mashing yakhi.
- B 18.Atoppa venue, auditoriums, halls, grounds, asinachingba. gumbada perform touba orchestraga appellantsgumba hotel bar establishmentsda perform touba orchestrasing pumkhet khetnei haina yetlammi. Ahanbasinggidi, orchestras amasung theatrical programsing amuktang thokpa eventni amasung publicna audience oina yengbani. Appellantsgumba hotel bar establishmentsda orchestra performance yu serve toubagi ancilliary oi. Orchestrangi public performance natraga
- C musical groups gumna asigumba programsing professional oiba natte. Establishmentsna orchestrangi artists perform toubagi mingda, establishmentsgi premises manungda customerga fongna sexual oiba maongda loinaba natraga customerga loinana mapanda chatkhi haina khangba waitresses natraga bar girls tasengna darkar oi. Asigumba thabaksingdagi fangba profitna, license holdersingna asigumba public
- D amusementgi mafamsing lanna prostitutiongi contact point oina sijinnaba induce toui. IPC gi Section 294gi makhada apunba cases 217 amasung Immoral Traficking(Prevention) Act, (PITA), 1956gi Section 3,4,5 makhada cases 97, 2009 amasung March 2013gi marakta, Mumbaida register toukhi hairammi.
- E 19.Leibak miyamgi fanaba , Article 19(6)gi makhada maramchaba athingba thamba yabana, hairiba conditionssingna Article 19(1)(g) thugaide haina respondentsna hairammi. Nupigi lemjaba ngaknaba amasung makhoibu exploitation touba thingnaba asigumba athingbasi toudaba yadaba oi; makhoi maram chai amasung, Indiagi Constitution gi Article 15(3)na, asigi mathakta, save toui.
- F 20.Matungda lapka *Karnataka Live Band Restaurants Association v. State of Karnataka*⁶judgmentsna, houjik singnariba asigumba makhalti regulation, recognize touba darkar oi haina takhi haina respondent statena takshillammi. Aduna, houjikki singnariba conditionssing maram chai.
- G *Analysis amasung Findings*
- I. *Statutory provisions*
- H 21.“public amusement mafam” asumna Act, 1951gi Section2(9)na makhada takli:

⁶(2018) 4 SCC 372

A

“music, eshei shakpa, jagoi saba, natraga diversion ama hekta, natraga madu tounabagi means, provide toubu amasung mafamduda peisa lounaga public admit toubu natraga peisa matungda admit toubu adudagi matungda peisa lounagi haibagi intention leiba amasung race course, circus, theatre, music hall, billiard room, bagatelle room, gymnasium, fencing school, swimming pool natraga dancing hallgi mafam yaona “public amusementgi mafam” koui.

B

Act, 1951gi Section 2 (10)na “public entertainment mafam” makhada sumna takli:

“lodging-house, boarding amasung lodging-house natraga residential hotel, eating-house ama hekta yaona maduda publicna consumption tounaba maduda natraga anakpada liquor makhal ama natraga mayai kaba nisha fanghanba(tavern, wine shop, a beer natraga spirit shop, arrack, toddy, ganja,bhang natraga opium shop) adubu “public entertainment mafam” koui.

C

D

Act, 1951gi Section 33 rule amasung regulation sembagi powerni; ateigi marakta, masi makhagisumna pai:

“Section 33. Public placeda traffic amasung presentation of order semnaba rules natraga regulations, asinachingba.

E

(1) Sub-section asida palliba hiram amagi matangda, Commissionerna, madugi palliba matter amagi matangda, palliba matter adugi matangda (Clauses[(a), (b), (d), (db),(e), (g), (r) amasung (u)] manungi yaodana) District Magistrate, amasung mathakta palliba clausesda yaoba matters amsung sub-section asigi Clause(y) ga punna paraga Superintendent of Police, makhoi makhoigi chargeda leiba areas natraga madugi manungda leiba saruk ama, Act asiga chanadaba oidana rule semba, rule natraga order hongdopa natraga kakpa yai.....

F

(w)(i) public amusement natraga entertainmentgi mafamsing licensing natraga controlling tounaba; (ii) Obstruction, inconvenience, annoyance, risk, danger natraga anakpada leiba residents natraga passengerda damage thokpa thingnaba public amusement natraga entertainment natraga assembly gi mafam athingba thamnaba;

G

H

- A (wa) (i) Public order, decency nattraga moralitygi interestda nattraga micham prjagi fanaba specify touduna exceptions oiba yaohandana, musical, dancing, mimetic, nattraga theatrical nattraga atoppa performances public amusementgidamak, mela amasung tamasha yaona licensing nattraga controlling tounaba;
- B (ii) Public order, decency nattraga moralitygi interstda nattraga general public, artistsgi employment amasung artists amasung audiencegi asigumba performanceda conduct regulate tounaba;
- C Act, 1951 gi Section 33(1)(2)na rules semba, hongdokpa amasung kakpa yahalli; atei marakta, masina makhagisumna pai:
“Section 33(1) ...
- D (2)(i) Sub-section (1)gi Clause (a), (b) amasung (c)gi makhada rules semba, hongdokpa nattraga kakpagi power State Governmentda makha polli.

(ii) Sub-section (1)gi lemhouba clausegi makhada rules semba, hongdokpa amasung kakthatpagi power Governmentgi ayaba hanna louraga sijinnagani.
- E
- 22.Marileinaba localityda hanna fongdokpagi Section 33(6)gi conditionna rules semba, hongdokpa amasung kakpa (Section 33(2) gi makhada)gi power adu athingba leihalli. Licenses amasung written permissionsna conditions, asinachingba. specify tougadabani haina Section 162(1)na thamli. Section 162(2) na licenses amasung written conditions kakthatpa yahalli.
- F
- 23.Hairiba mafamsing function tounaba license pibagi precondition oina, applicantsna condition mayam, asigumba, fulfill touba tai:
- G (i)Premises license applicationdu dharmagi, lairik-laisugi institution nattraga hospitaldagi mafamdu adu, atei marakta, kayam thapage utpa site plan yaogani.

(ii)Proposed amusementgi mafam adudagi dharmagi mafam nattraga hospital nattraga lairik-laisugi institution metre 75
- H dagi henna thapvani.
(iii)Proposed amusementgi mafam adu congested amasung mi kungna taba mafamda oiroidabani.

A

(iv)Proposed mafam adu 10m. dagi henna pakpa lambi thangnana leigadabani.

(v)Proposed amusementgi mafam adugi owner/partners annti-social activities natraga adugumba activitiesdamak detain natraga arrest touba natraga asigumba maralgidamak convicted oiroidabani.

B

(vi)Video parlourda install tougadaba machine anigi lapnabadu planda utkani.

(vii)75m. gi radius manungda mannaba amusement mafam leiroidabani.

C

(viii)Licence piriba matam pumnamakta licenceda piriba conditions ngakna chatkani amasung karigumba licencegi conditions ama kaibada, usual procedure follow touraga licence adu kakpa yai.

24. Nupigi lemjaba ngakpa regulationna mathakki provisionsingna supplement toui. Bombay Police Act, 1951gi provisions amasung amukka henna thoidokna Section 33(1)na licensing authorityna rule semba ngamhali.

D

25. Amusement Rule, 1960gi Rules 122 amasung 123na performance toubada restrictive conditions prescribe toui. Masigi athingbada fajadaba wahei wata, yut chadab lol sijinnaba; ikai khangdaba fijet, jagoi, movement natraga ingit yaoi. Performance licence da mannaba conditions amasung athingba thammi. Exhibition natraga advertisement amada fi settaba natraga fi khajiktang setpa nupigi photograph poster natraga newspaperda sijinnaba; piriba mafam nattaba atoppa mafamda performance touba; Audienceda yaoba member ga cabaret performersna audiencega mix touba natraga hakchang thengnaduna natraga atoppa maongda shoknaba.

E

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II. *Hannagi litigation*

26.Maharashtrada leiba establishmentsda nupisingna performancesda participate toubaga marileinana prohibition amasung athingba thambagi controversysinggi matangda court asina khangi. Tang 14.8.2005dagi chatnaba houkhiba Act, 1951da hapchinkhiba Section 33A amasung 33Bgi validity ahanba judgment: *IHRA-Ina khannarammi*. Section 33Ana “*eating house, permit room natraga beer barda makhali amagi natraga type amagi dance performance*” touba absolutely thinglammi.

G

H

- A Existing licensessu kakthatlammi; asigumba performance touba offence oirammi. Section 33B(2005gi amendment na houdokpa)na “*drama theatre, cinema theatre amasung auditorium; members khaktada changba yaba sports club natranga gymkhana, natranga three starred natranga ahenba hotel natranga atoppa establishment natranga establishments class da touba performance*”) applicable oihande, (a) Stateda tourism activities
- B chaokhatnaba Central amasung State Governmentgi tourism policy, natranga (b) State Governmentna special oina natranga genera oiba cultural activities matangda specify touba order” adu yenglaga.

- 27.Provisions (Sections 33A amasung 33B) ani Bombay High Courtda challenge toukhibabagi subject matter oirammi, maduda common
- C judgment amana Constitution of Indiagi⁸ Articles 14 amasung 19(1)(g) thugai haina rai tarammi. Maharashtra statena appeal tourammi; Court asina Bombay High Court(IHRA-I da)na taba rai adu upheld toukhi.

- 28.Anisuba inningsgidamak chap charammi. Tang 26.05.2014dagi anouba provisions enact touduna Statena Act, 1951 semdoklammi. Writ Petition⁹
- D ama file touduna Indian Hotel & Restaurant Associationna amendmendtssing adu singnarammi. IHRA-I da takhiba rai yenglaga, court asina, reasoned order amana singnariba provision(nouna hapchinba Section 33A) adu operation toubada stay tourammi. *Indian Hotel amasung Restaurant Association v. Maharashtra State*¹⁰(matungda IHRA-II) gi hairiba orderna atei yaoraga hairammi madudi

- E “... Actgi Section 33-A(1)da yaoriba provisions adugi operation stay touba 33eikhoina maram chai khalli. Adubu, dance performancena maong amada obscenity khara oirasu fongdokpa yaroi haina condtion thamli. Hannagi judgments mayek sengna haikhre madudi obscene jagoina nupigi ching-lemba manghanba
- F thingnaba licensing authority da matik chana power pire, haibasi takningi.”

- 29.Maharashtra Legislative Assemblyna amuk hanna khu thingjillammi.
- G Handakti, makha taba enactment¹¹ amana Section 33A kaklammi. Aduna maram oiduna, 2014da toukhiba amendments adugi validity khannanaba
- H

⁸In the judgment reported as State of Maharashtra v. Indian Hotel & Restaurant Assn. 2006. SCC Online Bom 418
⁹W.P. No.793/2014.

¹⁰(2015) 16 SCC 100.

¹¹(Maharashtra Act. No.12 of 2016.

tanja leikhide. *IHRA-II* gi writ petition adu tang 30.08¹²da dispose toukhi. A

30.2014gi amendment kakpa Act(tang 30.08.2016dagi chatnaba) aduna 2016 gi Act, Maharashtra Legislative Assemblyna enactment toukhi. Indian Hotel amasung Restaurant Association amuk hanna Constitutiongi Article 32gi makhada Act, 2016gi provisionssing unconstitutional oi haiduna Court asida approach tourammi amasung *IHRA-I*da takhiba judgment adugi mayokta enactment toubani. Enactmentgi provisions kaya loinana madugi makhada semba rules, amasung forms, asinachingba(rules makhada) na thamkhiba conditions Constitutiongi Article 14 amasung 19(1)(g) thugai haina court asina *IHRA-III* da pak chaona iba judgmentda rai takhi. C

III. Discussion

31.Statena regulate toubagi power lei haib adu yetnade haibasi mathakki discussion asidagi ure. Adubu, yetnariba wafamdi, license gi conditiongi matengna athingba thamliba adu impermissible oibra, maramdi makhoidu rulesgi sharuk ama oide natraga lawgi provision oina enactment toukhiba leite, amasung conditionna Indiagi Constitutiongi Article 14 amasung 19(1)(g) thugaibra. D

32.Court asigi hannagi raisingda, barsingda jagoi saba *total ban* toub justified oibra, amasung maduna Indiagi Constitutiongi Article 14 amasung 19(1)(g) thugaibra. Act, 1951 gi Sections 33A amasung 33Bgi validitygi matangda *IHRA-I* da issue oikhi. Court asina strategi submissions animak reject tourammi: ahanbada, dancing permitted oiba star ahumgi amasung mathakki rating hotels amasung restaurantsgi establishments amasung client oiribasinggi nature maramna, reasonable classification, marakta leirammi; anisubada, dancer oina perform touriba nupising deprived backgrounddagi oiba amasung makhoibu exploitation toubagi oithokpa maramna. *IHRA-I* da, atei yaona, asumna rai tarammi: E

“119. Intelligible differentia koubadugi mathanggi justificationdgi grounddi banned establishmentsda perform toub nupising vulnerable oiba kanglupni. Makhoi yamna deprived backgrounddagi lakpani. Appellantsgi matung inna, makhoi ayamba bar dancingda traffick touduna purakpani. Mamanggi submissions eikhoina accept toub ngamde. Tongan tonganba dance bars criminalsinggi meeting point. F G H

¹²The order is reported as 2018 SCC Online (SC) 3127

A *amasung girlsgi pick-up points haiba hypothesisda yumfam oiduna singnariba legislation sembani haibasi Objects amasung Reasons paraga ugani. Dance barsing asi nupising trafficking actively yaoi haibagi evidence amatta Governmentda pikhi haiba Object amasung Reasonsna haide Asengbadi, nupising trafficking toui haibagi plea ahanba oina*

B *High Courtda file touba affidavitda project tourammi. Ban thamlaba matungda pikhatlakpa reportsda yumfam oiraga mamangda palliba pleas asi raise tourakpa malli. Report kayagi extracts ekhoina hanna ukhre. Section 33Ana cover touba dance barsga traffickingga mari leinei haibasi asigumba isolated oiba examplesna establish tounaba matik chade haina eikhoigi opinion oi. Maram aduna, ban adu vulnerable oiba nupisingbu protection tounaba thambani haiba appellantsinggi submissionsing eikhona reject toui.*

C

120. *Ban touba establishments amasung akoibagi areagi atmosphere da thokhalliba degree of harm aduda yumfam oiraga appellants gi learned counselsna piba anisuba justificationni. Legislaturena degree of harm recognize touba free oi amasung need adu mayek khwaidagi sengi haina khangba cases hendoktana restriction thamgani haibasi court asina Ram Krishna Dalmia case (AIR 1958 SC 538)da chingnaba leitana rai pikhre. Abuse touba yaba field pumnamak lolina konsinduna law direct toubagi mahutta, statena evil tasengna lei haina khanba mafamda magi law direct tougani, adubu asigumba warep adu populationgi ayamba mina mapung oina yanaraga taba oigadabani natraga empirical datada yumfam oigani haiba US court na Paston case [58 L Ed 539 : 232 US 138 (1914)] da piba observation adu yaningi. Prohibited establishmentsda jagoi sabana depravity amasung publicgi moral corruption thokhalli natraga miyamna asumna situation oi haibagi consensus leite haina warep tannaba stategi empirical data leite haibasi eikhoigi opinionni. High Courtda puthokkhiba report ahumgi divergent viewpoints leikhi. Paston case [58 L Ed 539 : 232 US 138 (1914)] da pikhiba raina appellant gi mateeng oide. Legislaturena miyamgi darkar oiba understand amasung appreciate toui amasung experiencedagi manifest touba problemsda magi laws direct toui amasung discrimination touba adu adequate grounds yumfam oi haiba presumption lei haina Court asina Mohd. Hanif Quareshi [AIR 1958 SC 7311] caseda.*

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A
toughiba observations adu eikhoina khang.
Establishmentgi mafam natraga class khaktada
yumfam oiraga blatant discrimination touba chummi
haiba experiencegi details amata appellantna houjikki
case asida pukhokhide.

B
121. Akoibada leiba fibam, natraga vulnerabilityda
yumfam oiraga exempted establishments amasung
prohibited establishments anigi markta classification
toba asi statena justify toude haibasi eikhoigi opinion
oi. Chingnaba yaodana, degree of harm measure touba
amasung reasonable classification toubagi legislature C
khwaidagi faba judge oi, adubu asigumba classification
asi singnaba matamda, ostensible conclusions adugi
maramsing Statena puthokfam thoki. Awatpa facilitiesgi
inferior qualitygi dance barsda masana content oiriba
misingdudagi nungai yaifabani hairiba kanglupsing,
haibadi, inak khunba amasung afaoba misingna D
awangba standardgi decency, morality natraga
charactergi strength henna lei haiba presumptionda
yumfam oiraga hoijikki legislation asi sembani haibasi
eikhoigi opinionni. "Mannaba status amasung
opportunity amasung mi amagagi dignity" citizensingda
fanghangani haina Constitutiongi Preambleda resolve E
toba adubu asigumba presumption asiga chanade.
Three stardagi taba establishmentsda identical dance
item performance toubana nupigi dignity
hanthahangani amsung public morality natraga morals
fathalloi, corrupt amasung sokhang; adubu, exempted
establishmentsda masi thoikloi haina state F
governmentna presumption toui. Makhoisi amuk hanna
resurrect touraroidraba houkhiba yugki misconceived
notionsni.

xxxxx xxxxx xxxxx
xxxxx

G
123. Eikhoigi opiniononda, obscene natraga immoral
influencesda makhoigi mind open oibasingbu lamchat
fathaldaba amasung manghanba activities five-star
hotels natraga dance barsda makhoina perform
toubagi yumfamda khaidokpa yaroi. Moral wangba H

A

amasung decent behaviour upper classesgi khaktamakta leiba domainni, aduga lower classes gina vulgarity amasung depravityna hanthaba class oi hana thajabasi Court asigi judicial conscience na chummi haina thajade. Wholly unconstitutional oi amasung thoidok hendokna Indragi Constitutiongi Article 14 gi mayokta leibana asigumba invidious presumptiongi yumfamdada classification toubasi kakthatpa yai.

B

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33. Houjik leiriba legal amasung regulatory regime-Act, 1951 yaona, amasung masida yaoriba rules khannaraga, judgmentsna makhagi asi warep tarammi: “132. Public safetygi interestda amasung samajgi fanaba amasung nupigi decency ngaknaba loinana nupigi exploitation thingnaba, Bombay Police Act, 1951gi makhada Rules semmi. Preamble loinana Statement of Objects amasung Reasonsda record toubada unfounded conclusions nattana houjik leiriba lawgi frameworkgi manungda situation adu deal toubada oithokte haiba utnaba Statena thamkhiba material on record amatta leite. [State of Gujarat v. Mirzaput Moti Kureshi Jamat[(2005) 8 SCC 534 : AIR 2006 SC 212 yengu] maduda asumna rai tararammi : (SCC p. 573, para 75) restriction natraga prohibition oiba restrictiongi reasonability judge toubagi standard chap mannei, total prohibition nattana khara hanthaba alternative adu inadequate oi haina satisfy tougani haiba nattana]. Licensegi conditions thugaibagi licencing authorityna license suspend natraga cancel toubada yai haina Bombay Police Actgi Section 33(1)(w) gi makhada semba Regulations, hennadum Regulations 238 amsung 242na piri. Performance adu objectionable oirabadi, performance ama hekta khudakta lepnaba Regulation 241na licensing authority natraga Sub-Inspectordagi tadaba authorized police officerna direction piba yabagi power pi. Conditions thugaibagi license suspend natraga kakpaga power adu Bombay Police Actgi Section 162na competent authority/Police Commissioner/District Magistrateda power pi. Obscene dancena nupigi dignity violation toubagi perceive tourabadi, licensing authorityna safeguard tounaba sufficient power piri.”

34. Mathanggi decisionsna same issue examine toubadu, IHRA-III dani. Barsda jagoi saba adu mapung fana prohibit tounaba 2016 Actna hotnarammi. Singnariba regulations adu public

morals yenglaga leitaba yade haiba argumentsda A
court asina *State of Punjab v. Devans Modern*
Breweries Ltd. & Atoppagi case pallammi. *Devans*
caseda courtna observe toukhi madudi:

“48. Statutena govern toubu commodity am
dealing toubu inherently noxious amasung B
pernicious oi haiba yaro. Samajna business am
condemn toubu yade natraga adugumba business
adu competent oiba legislaturngi statutory
enactmentna permit touragadi, madu toubu yai hai
presumption leite. Civilized societygi morality
natraga oidabra haibasi legislature na aroiba oina C
lepkadaba oibana businessda yaoba article(s)
criminal nature oibra haigani. Smajna asigi
matangda hainingai leite. Common-law rights
khaktagi court da khannaba yaba matterda
samajna hainingba haiba yaramgani amasung
fieldduda operate touriba statutesdagi lakpa rights D
and obligations gi matangda haiba yade.
Legislative enactmentsna legislature na health,
safety amasung general publicgi welfare gi
matangda define amasung prohibit natraga
regulate tougani. Inherently noxious amasung
pernicious in nature oiba trade regulate tounaba E
regulatory statutes sembada Constitutiongi Article
16 Clause (6) conformityda semgani; makha tana,
health, safety amasung general publicgi yaifanaba
sufficient measures loukhatkani. Statutory
enactment matunginna crime natte haiba wafam
adu courtsingna law interpret toubada mi amana F
crime toui haiba interpretation toubagi mateng
louroi. Mi amana commodity ama karbar toubadu
crime oibra natraga oidabra haibadu statutory
enactment khaktagi subject-matter oi.

35. *IHRA-III* da, court asina *IHRA-I* da hanna pikhiba rulingda G
rely toui amasung follow toui, maduda public moral sokpagi
arguments, amasung maduna nupigi dignity offend
tourammi:

“... Public Morals shokhanba: Dance
barsna public morale shokhalli amasung H
fattaba thokhalli haina yetpa adu mayek sengna

¹³(2004) 11 SCC 26

A *kakthallammi. Matang chaba partda, Court asina hairammi madudi:*

B *“120...Prohibited establishmentsda jagoi sabana shoidana public moral depravity amasung corruption thokhalli haiba conclusion tannaba Stategi manakta empirical data leiramde nattraga asumna oi habagi general consensus leite, eikhoigi opiniononda...”*

C *(iii) Res Extra Commercium: Asigumba establishmentsds dance performance toubana nupigidignity shokhalli amasung public moral mangba thokhalli haina statena yetlammi. Asumna, Constitutiongi Article 19(6)gi makhada “general publicgi inerestda” prohibition thambadu reasonable restriction tangaifadaba oibanani haina respondentna justify toui. Court asina hairiba yetpa warolsing kaklammi, amasung respondentsna “restriction adu maram chai nattraga adu general publicgi interstdani haina establish toubu ngamde” haina rai taramm. Asigumba restriction justify tounaba amasung houjik lieriba regulatory frameworkgi insufficiency lei haiba justify tounaba prohibitionna “direct and inevitable effect”gi doctrine satisfy toubu ngamde haina Court asina makha tana rai takhi.”*

E 36.Karigumba performance ama obscenity tarabadi, madu lawgi makhada dandi pigani(Section 294, Indian Penal Code amasung mathakki, Act, 2016gi Section 8(2)). “Obscenity” haiba term asi lawna khangngi haina courtna taklammi. Makha tana, premises amana obscene shows yaramlabadi, license kakkapi risk lei haina hairammi:

F *“Adu oirabasu, license fanglabasu, obscene dance performance nattraga working women exploit touraga immoral purpose amagidamak mafam adu sijinnaba yai haide. Asigumbathabaksing asi Sub-Section(2)gi makhada dandi piba yai. Asumba maongda, IPCgi Section 294na takliba offence aduga Section 8(2)gi offence aduga asumna kharadi khetnei.”*

G Section 294gi makhada offence oiba act amagi higher penaltygi provision (3 years) leibadu maram chai haina Section 8(2) singnarakpa adu Courtna yakhide.

H 37.IHRA-III da courtna performersingda currency notes amasung coins hunba, nattraga pullap langsinba thingba conditions adu singnaba khannarammi; performerda tip pibadu establishmentsgi billda yaohangadabani haiba condition yaoui. Peisa hunb nttraga

peisa pullap langsinba adu pamdaba practice amani haina courtna rai tarammi; adumakpu, performerssingna makhoigidamak meant touba tip loudanaba athingba thambadu invalid oi haina courtna rai tarammi:

“coins, currency notes, asinachingba. hunba natraga pullap langsinbagi matangda yengbada, provisionssing justified oi maramdi B
provisionsdana untoward incident thokpa thingnaba pandam thammi amasung adugumba actsna indecency oiba situation laknaba tendency lei. Aduna, peisa ama natraga ama, dance performance adu appreciation touba adu pigadabani, asigumba coins, asinachingba. hundana natraga pullap lanngsindana touba yai. Mafamdugi administrationna semba billda tip tinsinduna khaktang pini haibasidi maram chade. Onna teinabada, madu tourabadi, asigumba tips fangfam thokpa mising fanghanbidaba yai. Makha tana, tipping toubagi manner asi amaromda, employer amasung performer anigi marakta, atoppa amaromdana performer amasung visitorgi marakki oibana, statena tipping toubagi manner impose touba yade. D
Coins, currency notes natraga pot ama natraga peisa onthokpa yaba anything stageda hunba natraga pullap oina langsinba thingbagi provisionsing chummi haina eikhoina uphold toui. Adubu, dancersingda mashada notes piba adudi inappropriate oi haiba yade. Tips billda happaga khakta pini haiba provision adu eikhoina kakle.” E

38. Atoppa conditions, asigumba, establishments adu dharmagi amasung lairik-laisu tambagi institutionsdagi yamdrabada kilometer ama thapkadabani, makhoigi structuresgi safety, premises adu engineersingna inspection touba, amasung atoppa regulatory conditionsgi stipulations khannarammi. Masida stagegi size, madugi area, asinachingba, yaorammi. Courtna asigumba regulationsing asi unexceptionable oi haina opinion thammi. Performance touriba areaduda alcohol serve touba yadabagi condition adu unreasonable oi haina courtna rai pirammi:

“Part B gi condition No.12 na dances utliba/sariba bar roomda alcohol serve toubagi prescribe toui. Masi totally disproportionate, unreasonable amasung arbitrary oi. Asigumba mafamda liquor serve touba yaroidabagi maram ude. Yu thaklaba matungda jagoi sabisingda misbehave tougani haiba aranba presumptiongi moralistic overtones na Statebu influence toui. Masi oirabadi, asigumba presumption asi nupi waitressna alcohol serve touriba bar roomsda equally applicable oifam thoki. Adubu, asigumba conditionsing Courtna maram G
H

- A *chade haina rai takhre. Dance performance utpa mafamda thokpa asigumba naturegi aberration natragaga sporadic incidents, bar rooms amasung main restaurantsgumba atoppa mafamsingdasu thokpa yai. Asigumba nuance thingnaba atoppa measures loukhatpa tai. Alcoholic beverage serve*
- B *touba pumthing thingba yaroi. Eikhoina, maram aduna, Condition No.12 kakle.*

39. Strategi mateng louriba arguments khudingmak statutory prohibition loinana license condition singnaba adu yenglaga oi haibasi mayek sengi. Houjikki case asida, public interest da
- C *athingba tangaifade, nupibu henna yaifahannaba, nupigi human trafficking thingnaba, amasung makhoibu exploitation touba thingnaba, amasung madudi athingbasing public moralsgidamak tangaifade haina arguments touribasing asi hanna haiduna haikhraba wani, amasung decisively kakhre. Yakhidraba submissionsing amuk hanna haiba nattana,*
- D *statena, independently amasung karamna, individual orchestra natraga bandda gender cap thambana regulatory oige haibadu justify touba ngamde.*

40. Court asigi tang 02.03.2016gi orderna stage (performances tounaba mafam) gi size kaya faoba yai haibagi 10ft.x12 ft. size
- E *“restaurant area/ permit roomda, F.L.-III gi restaurant amasung permit roomgi marakta non-transparent partition leiba, Excise Departmentna yaba approved plan leiba” conditions record toukhi.” Performergi mashing khwaidagi yamba marini haina courtda khanghalkhi. Performersinggi khwaidagi yamba masing, madu houjikki caseda nipan oiriba,*
- F *adu maram chade haiba yaroi, maramdi enclosure (120 sq.ft.) aduda instrumentalists yaoba tai, madugi orderna troupe natraga band gi gender-cap khannanaba occasion leikhide.*

41. *Karnataka Live Band Restaurants Association*(supra) da court asigi wayenga matangda, live bandgidamak license
- G *loubagi requirement adu singnarammi. Court asina license loubagi legal requirement adu maram chai haina wayenkhi. Maduda, licensinggi conditionssing yetnade. Maram aduna, madugi wayen aduna houjikki casegi controversies da bearing leite.*

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42. Bars amasung establishmentsda perform touba nupising, appellants gumna, akhannaba samajgi class amada ya oi haiba stereotypical view amadagi thoklapa product aduna singnariba gender-cap (madudi, performance amada nupi mari amasung nupa mari) leihanbani. Perceptibly, court asina IHRA-I da masi observe toukhi:

“Dance barsgi mayokta oppressive amasung moralistic oiba attitude as patriarchal view, madudi, “yumgi natraga domestic spheregi mapanda thabak ama natraga profession amada engage touba” nupising “low societal status” oi haiba view aduda root oi.

43. Anuj Garg & atoppasing v. Hotel Association of India & atoppasing¹⁴da, nupisingbu injurydagi ngakhoknaba asigumba measures darkar oi haiba stategi arguments mari leinana court asina nupigi employmentda thamba restrictions examine toukhi amasung makhagisumna observe toukhi:

36. Empty rightsgi rhetoric adu eikhoina further touba pamde. Singnariba Act asina maram oiduna freedom mangbana stategi protection yaodabana nupising chap mannana vulnerable oi. Houjikki lawna protectiongi mingda masigi subjectsing victimize toubi. Asigi matangda, protection fangnaba pandamda Statena prescribe touba interference aduga legitimate aims ga proportionate oigadabani. Proportionality judge tounaba standard adu modern democratic societyda maram chaba standard oigadabani.

37. Nupigi freedom da athingba thambagi mahutta, empowerment henna tenable amasung socially wise approach oigani. Law enforcement strategies loinana masigi matangi law modeling na masigi empowerment asi yaogadabani.”

Matungda, manaba judgment adugi chatharakpada, asumna observe tourammi madudi:

“47. Lawgi ultimate effect aduna oppression touba perpetuate touduna loisinba oiroidabani. Compelling oiba Stategi purpose letragadi fundamental tenet oiriba personal freedom adu expediency mamingda compromise touba yade. Yamna kupna scrutiny toubasi asigumba casesgi judicial reviewgi normative thresholdni.”

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¹⁴(2008) 3 SCC 1

- A 34. *Joseph Shine v. Union of India* caseda court asigi concurrent judgments marakta amada masigi wakhal asi poignantly articulate toukhi, maduda emphasize toubadudi:

B *"Samajna oithokpa yaroidaba virtues nupisingna lei haina ascribe toui amasung mangondagi conformity expectation touduna akhuba behaviorgi sphere amada confine toui. [Naandita Haksar. "Dominance, Suppression and the Law" in Lotika Sarkar and B. Sivaramayya(Eds.), Women and Law: Contemporary Problems, (Vikas Publishing House 1994).] Nupibu pedestalda thangatpa asi hotnaba gi sharuk amani. Anisuba sharukna mabu mafam amada confine toubani. Mafam adugi boundaries adu nupi adu kari oini natraga oiroi haibaduna leppi. Nupibu pure amasung virtuegi saktamni haina uba samajna makhoibu virulent attack toubada nungaitaba pokte... Virtuegi embodiment oina imungda makhoibu ka henna discrimination toubadu wa ngangdana yengba amasung accept toubadu samajna makhoidagi expect toui. Nupana nupigi kari chummi amasung lanli haiba wakhallon aduna condition touraga nupibu pedestalda thangatpaga process adugu sarukni."*

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- E 35. Matam kuinagi mamangda, *C.B. Muthamma v. Union of India* gi caseda, service ruleda unfairness amasung discrimination infong fongna uba service rule recognize toukhi, service rule aduna Indian Foreign Servicegi nupi official amana luhongdringei mamangda permission loubu darker oi, amasung *"karigumba magi family amasung domestic commitmentsna servicegi member oina mathou fajana amasung efficient oina toubada akaiba pigani haiba thajarabadi"* governmentna magi service terminate toubagi power leirammi. Court asina rule adu forthright oiba terms discriminatory oibana void oi haina rai takhi:

F *"5. Rule asida nupigi mayokta discrimination adu traumatic transparencyda thengnare. Nupi memberna luhongdringei mamangda governmentgi permission louragadi, nupa memberna luhonglabadi, government na mannaba risk adu leigani. Servicegi nupi member amagi family amasung domestic commitments na magi mathou efficient oina toubada apanba oiradi, nupa membergi matangdasu asigumba situation thokpa yai. Nuclear families, inter-continental marriages amasung unconventional behaviourgi matamsida, speciesgi gendergi mayokta afongba bias leiba asi khangba ngamde. Indian Foreign*

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¹⁵(2019) 3 SCC 39

¹⁶(1979) 4 SCC 260

Service (Recruitment, Cadre, Seniority and Promotion) Rules, 1961 gi Rule 18 same prejudicial strain lei. A

“(11)-(3) ***

(4) Luhonglaba nupi amata right oina serviceda happa entitle touroi.” B

6. *Ahanba ubada, rule asi Article 16 indabani. Luhonglaba nupa amagi right leirabadi, atoppa hiramasingda mannarabadi, luhonglaba nupi aduna worse oiba footingda leite. Ekhoigi jatigi ningtambagi lal adu nupina minai oibagi mayoktani haiba kaoduna, asonba sexbu yothling kolhou thangduna thamba masculine culturegi hangover oiba misogynous postureni. Ningtamba indivisible oi, justice su adu mangai. Eikhoigi foundingda thajaba leiba Article 14 amasung 16na Indiagi mi tangkhai ama, haibadi, eikhoigi nupisingbu, tragically ignore toui haibasi lairikta leiba Constitution amasung thabak oina touriba law anigi marakki athappa adugi reflectionni. High political office, diplomatic assignment faoba nupina pairaba matamsida, Parliamentgi mahut sinduna executivena Part III gi mayokta rules semlabadi, geneder parity thingba amasung pamdaba lei haina inference inevitable oi.”* C D

46. *Athingba kankhatnaba, respondentsna piba justification, nupisingbu ngakpinaba toubani haina makhoina claim touribasi faoba, court asigi opiniononda, makhoigi aspiration adu entomb toubagi haiba charge adu mayoknnari. Karigumba nupigi safetygi matangda tasengna wabiba taramladi- Anuj Gargda highlight toukhibagumana, statena thabak toubada conducive oiba situation semba, makhoibu thabak pinabada facilitate oinaba ahenna hotnaba, rather than madu thwart touba, amasung makhoigi choice lehandaba. Protection toui haina claim touba asigumba measuresing, asengbadi Article 15(3) bu shokhalli, maramdi makhoina special provisionsni haina masquerade toui amasung nupisingna sinfam khanjabada athingba thamba natraga sukyao yaohandanaba toui.* E F

47. *Law natraga ruleda entrenched touba condition adu kakkadra haina hangba wahangda, Bijoe Emmanuel(supra), Naveen Jindal(supra)gi mamanggi judgmentssing appellants cite tourammi. Houjikki case asida, performer loinamakki masing, natraga stage (madugi mathakta performance touba) pakpa chaoba adugi regulation adubu athingbani haina masak takpa yade; asigumba conditions semliba commissioner natraga government gi legitimate domainda lei.* G

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- A Court asigi conclusion amasung findings yenglaga, athingba adu gender dani, artha oina, maduna performergi masing gendergi yumfamda cap thamnaba hotnabani. Athingba asina Article 15(1) amasung Article 19(1)(g) animak *directly* thugai-akonbagisina mahei oina performer gi mathakta license ownergi. Masigi findings mityeng thamlaga, court asina rai tai madudi thamliba conditions – amasung unenforceable oi haina leplaba amasung void oibadu “law” oibra haibasi khannaba darkar oide.
- B

48. Court asigi authorities na repeatedly emphasize toukhre, genderda yumfam oiraga singnnaba lakpa matamda, singnariba practices natraga rules natraga norms adu kayamna historical prejudice, gender stereotypes amasung paternalism da thanaba yadana yaobra haibasi judgesingna kupna scrutinize touba mathouni. Asigumba attitudes asigi mafam eikhoigi samajda leite; hanna nupa khaktagi oiba “bastion”, armed forcesgi employment gumba, oidre haina recent developments na highlight touri. Mannaba maongda, houjikki case asida, singnariba conditions asi void oi haina court asina rai tai. Mamanggi court asigi judgmentsna kuirabagi mamangda tuminna leihankhraba lingering amasung discordant note adu houjikki judgment asina tuminna leihangani haina asha toui.
- C
- D

49. Mathakta piriba maramsina, singnariba judgment adu order asina kakthatle. Rules, 1960 amasung mari leinaba provisions makhada license piba bars, orchestra amasung bandsda perform touba yaba nupa natraga nupigi mashinggi matangda gender cap thamba conditions adu void oire haina order asina laothokle. Performance amada yaoba performer pullap oina nipan henba yadragasu, composition (i.e., lolina nupi, nupina ayamba natraga nupana, natraga handuna) adu combination ama hekta oiba yai. Appeals allow toure, adubu costgi order toudre.
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- Divya Pandey amasung Amarendra Kumar Appeals allowed
(Assisted by: Adnan Khan, LCRA)
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