

# Regulatory Rhythms, 2005: The Continuing Legal Challenges in Bengaluru's Live Music Evolution

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## Introduction

As discussed in [Part-I](#), the Supreme Court vide order dated 28 Nov 2002 clarified that as per the [Karnataka Police Act](#), "places of public amusement" involve music, singing, dancing, or gaming. [1] Hence, the 1989 Amusement Order did not apply to restaurants and bars since they were primarily "places of public entertainment." They offered music as an additional attraction, not the main one. In simple words, live music performance does not turn restaurants and bars into "places of amusement".

## Here Comes the New Licensing Order

Following this reasoning, the Police Commissioner of Bangalore issued the "Licensing and Controlling of Places of Public Entertainment (Bangalore City) Order, 2005" under the relevant law on May 24, 2005. [2]

Bar and restaurant owners challenged the 2005 Licensing Order. [3] They argued that: (a) the Order selectively applied to live bands or discotheques; and (b) it was issued without prior publication as mandated under section 31(6) of the Karnataka Police Act. [4] So, their right to comment and object on the draft regulation was violated.

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1. [Mohan H Pai v Commissioner of Police](#) 2013 SCC 14 592.

2. "The Licensing and Controlling of Places of Public Amusements (Bangalore City) Order, 2005" This order is not available online. This discussion is based on references made in various court judgments.

3. [Karnataka Live Band Restaurants Association V. State of Karnataka & Ors](#). ILR 2005 Kar 5401.

4. Section 31(6) of the Karnataka Police Act is reproduced below for ready reference:

6) The power of making, altering and rescinding orders, under this section shall be subject to the condition of the orders being made, altered or rescinded after previous publication, in accordance with the provisions, of Section 28 of the Karnataka General Clauses Act, 1899 and every order made or alteration or rescission of an order made under this section shall be published in the official Gazette and in the locality affected thereby by affixing copies thereof in conspicuous places near to the building, structure, work or place, as the case may be, to which the same specifically relates or by proclaiming the same by the beating of drums or by advertising the same in such local news-papers in English or in the local language, as the authority making, altering or rescinding the order, rule may deem fit, or by any two or more of these means or by any other means it may think suitable.

## Urgency Versus Process

The Licensing Authority countered that the Licensing Order was urgently implemented to ensure visitor safety, minimize public inconvenience, and prevent crime, given the proximity of educational and religious institutions.

Records showed that legislators were concerned about discotheques and cabarets in residential neighborhoods of Bangalore. Addressing these concerns, Government of Karnataka set up a special committee, named the 'Ramalingam Committee' to look into this issue and formulate draft rules. [5] The Committee came out with a draft order which the Police Commissioner approved on March 31, 2005. Further, he sent a letter to the Principal Secretary of Home and Transport indicating that the draft order was revised following discussions with the Law Secretary. Despite intentions for prior publication, the licensing order was unexpectedly notified on May 24, 2005. This was done without complying with legal requirements of prior publication and consultation. [6]

Per the Licensing Authority, the reason for urgency was the shutdown of dance bars in Maharashtra and concerns about bar dancers relocating to Bangalore. The Bangalore Police Commissioner had reached out to his counterpart in Mumbai -- an indication that these developments warranted a rapid implementation of the order. [7]

The previous Police Commissioner of Bangalore filed an affidavit supporting this urgency based on the above reasons.

Conversely, bar and restaurant owners contended that this justification was an afterthought. Pre-notification records should reflect this reasoning but it did not. The process lacked transparency. Given the licensing requirements were so overly burdensome and nearly impossible to meet, it was important for them to comment and object to the draft order. [8]

The Licensing Authority contended that the absence of prior publication does not invalidate the order. Per the proviso to [Section 31\(6\)](#), the Commissioner can skip prior publication if they are satisfied that the circumstances justify so. [9]

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5. ILR 2005 Kar 5401 (Para 12).

6. ILR 2005 Kar 5401 (Para 4).

7. ILR 2005 Kar 5401 (Para 6).

8. ILR 2005 Kar 5401 (Para 8).

9. Here is the the proviso for ready reference: Provided that any such orders may be made, altered or rescinded without previous publication if the Commissioner or the District Magistrate, as the case may be, is satisfied that circumstances exist which render it necessary that such orders or alterations therein or rescission thereof should be brought into force at once.

## The Dilemma of Due Process

Justice Manjunath, the High Court of Karnataka had to decide whether the circumstances justified bypassing the legal requirement for prior publication.

Several Supreme Court judgments had emphasized that rules or orders cannot be justified retrospectively with subsequent explanations or affidavits. [10] The basis for an order must be evident from the start and remain unaltered.

The Court observed that the Police Commissioner did not officially document his reasons for urgent notification of the new Licensing Order concerning live bands. [11]

Concerns over the closure of dance bars in Mumbai and its potential impact on Bangalore might have triggered his decision. However, in the absence of any written record, this is at best a speculation. There was no concrete evidence to support this. Consequently, the Court concluded that the Commissioner failed to document the rationale for waiving off the due process.

## Victory or Defeat?

Considering these issues, the High Court, on 27 Sep 2005, decided that the 2005 order should be considered a draft, subject to public consultation and amendments based on feedback. [12]

While doing so, the Judge, however, emphasized the necessity of regulation for public safety and held against reopening live band performances. He decided that live band performances in Bangalore would remain suspended until new regulations were notified following due process. [13]

The court's decision to continue the ban on live band performances falls into a legal gray area. Typically, a draft order lacks legal force. The validity of this interim measure is questionable, as it seems to pre-empt genuine revision based on public feedback and blurs the lines between creating, interpreting, and enforcing laws.

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10. *Mohinder Singh Gill & Anr vs The Chief Election Commissioner* 1978 AIR 851; *The Barium Chemicals Ltd. And Anr vs The Company Law Board And Others* 1967 AIR 295; *Municipal Corporation, Bhopal, M.P vs Misbahul Hasan & Ors* 1972 AIR 892.

11. ILR 2005 Kar 5401 (Para 13).

12. ILR 2005 Kar 5401 (Para 20).

13. ILR 2005 Kar 5401 (Para 21).

## Lifting the Ban with Conditions

The appeal against the judicial ban on live music performances reached the Division Bench. Noting no harm in waiting another two months until the new rules were finalized, it concurred with the original ruling and dismissed the appeal. [14]

Upon further appeal, a Supreme Court bench comprising Justice Ruma Pal and Dr. A.R. Lakshmanan heard the matter. [15]

They found no legal basis for the ban.

Nonetheless, the Court recognized the need for some "control." It selected three provisions from the draft order and sought proactive compliance from bar and restaurant owners: ensuring entertainment does not promote illegal activities, avoiding obscene or indecent performances, and prohibiting obscene materials. [16]

Bar and restaurant owners agreed to these conditions, stating they were not engaged in such activities anyway. [17]

The Supreme Court lifted the ban, imposing the three conditions from the draft order. [18]

## The Supreme Court's Conditional Compromise

The Supreme Court's decision to impose conditions from a draft set of rules based on the appellants' consent raises questions about the legal foundation of such enforcement. This approach, mirroring the single judge's ruling, sets a precedent where draft provisions can be temporarily enforced, potentially sidestepping public consultation. The Court's eagerness to adopt regulations prematurely might compromise the inclusiveness and effectiveness of the process and the final regulations.

## Conclusion

While the single judge's insistence on thoroughly documented justification for the urgent implementation of the Licensing Order is commendable, the imposition of a judicial ban on live band performances in the absence of explicit regulation raises concerns. Similarly, the Supreme Court's

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14. This judgement is not available online. The discussion is based on references made in the subsequent SC appeal ([KarnatakaLive Band Restaurants Association V. State of Karnataka & Ors 2018 4 SCC 400](#)).

15. [Karnataka Live Band Restaurants Association V. State of Karnataka & Ors 2018 4 SCC 400](#).

16. 2018 4 SCC 400 (Para 6).

17. 2018 4 SCC 400 (Para 7).

18. 2018 4 SCC 400 (Para 8).

subsequent decision to replace the judicial ban with three conditions from the draft order remains contentious. If the original judicial ban lacked legitimacy due to its absence of a legislative foundation, then the imposition of selective conditions, similarly devoid of legislative enactment, stands on equally tenuous ground.

Courts should be wary of encroaching upon legislative intent and prerogative. The path forward calls for a renewed commitment to procedural rigor, legislative clarity, and separation of powers.