Supreme Court of India
Calcutta Municipal Corpn vs East India Hotels Ltd on 21 July, 1994
Equivalent citations: 1995 AIR 419, 1994 SCC (5) 690
Author: K Singh
Bench: Kuldip Singh (J)

PETITIONER:
CALCUTTA MUNICIPAL CORPN.

Vs.

RESPONDENT:
EAST INDIA HOTELS LTD.

DATE OF JUDGMENT21/07/1994

BENCH:
KULDIP SINGH (J)
BENCH:
KULDIP SINGH (J)
PUNCHHI, M.M.
RAMASWAMY, K.

CITATION:
1995 AIR 419 1994 SCC (5) 690
JT 1994 (4) 463 1994 SCALE (3)456

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by KULDIP SINGH, J.- The East India Hotels Limited (the company), Respondent 1 in the appeal herein, owns and runs "Oberoi Grand" five star hotel in the city of Calcutta. The hotel had, at the relevant time, three restaurants within its premises called the Moghul Room, the Polynesia and the Princes. The question for our consideration is whether the company is required to pay the licence fee and obtain licences, to run the said restaurants, in terms of Section 443 of the Calcutta Municipal Act, 1951 (the Act). A Division Bench of the Calcutta High Court in appeal answered the question in the negative and in favour of the company. This appeal by the Calcutta Municipal Corporation (the Corporation) is against the judgment of the High Court.

2. It is not disputed that prior to the present proceedings the company has always been obtaining licences from the Corporation under Section 443 of the Act in respect of the restaurants. Initially, the licence fee was Rs 250 per annum per restaurant. The said fee was increased from time to time.

The Corporation, by an order dated 22-3-1982, increased the licence fee to Rs 15,000 in respect of each of the places of amusement/recreation under Section 443 of the Act.

3. The company challenged the increase of the licence fee to Rs 15,000 before the Calcutta High Court by way of a writ petition under Article 226 of the Constitution of India. Before the learned Single Judge three points were raised. It was contended that under Section 218 read with Schedule IV to the Act, the Corporation could not fix more than Rs 250 as licence fee. The learned Judge rejected the contention on the ground that the licence fee was levied under Section 443 of the Act to which Schedule IV to the Act has no relevance. The other points raised before the learned Single Judge were that there was no valid order made by the Corporation and no opportunity of hearing was afforded to the company before enhancing the licence fee. Both these contentions were also rejected. As a consequence the learned Single Judge dismissed the writ petition. The company filed appeal against the judgment of the learned Single Judge which was heard by a Division Bench of the High Court.

4. The only point raised by the company, before the Division Bench of the High Court, was neither pleaded in the writ petition nor argued before the learned Single Judge. The Division Bench permitted the point to be raised on the following reasoning:

> "We permitted the learned advocate for the appellants to raise this new contention and urge the new plea as it appeared to us that the same was purely a question of law. In our view, no new facts were required to be pleaded or brought on record to enable us to consider this new contention and decide on the issue."

5. Before we state the point it would be useful to go through the provisions of Section 443 of the Act which are as under:

> "443. Licensing and control of theatres, circuses and places of public amusement.- No person shall, without or otherwise than in conformity with the terms of a licence granted by the Commissioner in this behalf, keep open any theatre, circus, cinema house, dancing hall or other similar place of public resort, recreation or amusement:
>
> Provided that this section shall not apply to private performances in any such place."

It was argued before the Division Bench of the High Court that the provisions of Section 443 of the Act were not applicable to the restaurants, despite the fact that recreation/amusement in the shape of music, cabaret shows and dancing etc. was provided in such establishments. The Division Bench posed the following question for its consideration:

> "The short question before us is whether the objects 'theatre, circus, cinema house, dancing hall' referred to in Section 443 of the Act can or should be construed ejusdem generis and whether on such construction it is to be held that restaurant though providing items of amusement is not a place of public resort, recreation or amusement similar to a theatre, circus, cinema house or dancing hall and as such

does not come within the mischief of Section 443."

6. The Division Bench of the High Court culled out the principles for the applicability of the rule of ejusdem generis from the judgments of this Court in Jage Ram v. State of Haryana1 and Amar Chandra Chakraborty v. Collector of Excise2. Construing Section 443 of the Act the High Court found that "theatre, circus, cinema house, dancing hall" have been specifically mentioned followed by the expression "other similar places of public resort, recreation or amusement" which are of general nature. Applying the principles of ejusdem generis, the Division Bench came to the conclusion that the general words are intended to have a restricted meaning in the sense that "other similar places" must fall within the class enumerated by the specific words. On the said reasoning, the Division Bench of the High Court held as under:

> "For the reasons above, the contentions of the appellants before us do not appear to be without substance. We hold that under Section 443 of the Calcutta Municipal Act, 1951 the Corporation of Calcutta is entitled to issue licences against payment of fees to theatres, circuses, cinema houses, dancing halls and other similar places of public resort, recreation or amusement but not to other establishment which do not fall in same class as the above. We hold further that a restaurant which provides items of amusement occasionally or incidentally in its main business, to its customers is not a place of public resort, recreation or amusement similar to a theatre, circus, cinema house dancing hall, which form a class by themselves, and does not fall' within the mischief of Section
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> 443. The respondents have no jurisdiction to call upon Appellant to take out a licence under Section 443."

7. It was not necessary for the Division Bench of the High Court to rely on the rule of ejusdem generis in this case. The provisions of Section 443 of the Act are on the face of it clear and unambiguous and, as such, there was no occasion to call into aid the said rule. Section 443 clearly states that a theatre, circus, cinema house, dancing hall or "other similar place" of public resort, recreation or amusement cannot be run without obtaining a licence from the Commissioner of the Corporation. It is thus obvious that apart from the four places of recreation/amusement specifically mentioned in the section "any other place" which comes within the mischief of the Act must be "a similar place". The short question for our consideration, therefore, is whether 1 (1971) 1 SCC 671 2 (1972) 2 SCC 442 : AIR 1972 SC 1863 the three restaurants run by the company in the premises of the hotel are similar to any of the four instances given under Section 443 of the Act.

8. Since the question argued before the Division Bench was neither pleaded nor raised before the learned Single Judge, the necessary facts required to support the said question were not directly forthcoming from the writ petition, a copy of which is placed on the appeal-papers. In any case, the company's own case in the writ petition before the High Court was as under:

> "In order to be categorised as a Government classified hotel, it should have certain basic features and amenities like cabaret and evening entertainments etc. and unless

these special facilities were available and continued to remain available your petitioners' said hotel would not have been a Government classified hotel. Your petitioners crave leave to refer to the said question arise for classification at the time of hearing if necessary.

Your petitioners state that the said hotel is a residential hotel and maintain a very high standard of service for twenty-four hours round the clock. It also provides entertainment during the evening, specially to cater for the tourist foreign visitors but also earn foreign exchange for the country.

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The    said   hotel    enjoys    international
reputation ....
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As stated above your petitioners run a hotel, in which lodging and meals including service of alcoholic beverages, both foreign liquor and Indian-made foreign liquor are provided to the residents and customers from the restaurants, bars and other rooms within the hotel precincts. The said restaurants cater for outsiders though mostly foreign tourists and the said restaurants are being maintained and/or run in accordance with the international standards for which your petitioner have had to incur heavy overhead expenses as is the case in the matter of maintenance of lodging. These restaurants and bars are part and parcel of the hotel though the same is not restricted to residents of the hotel only."

In the written statement filed before the High Court on 22-3-1983, the Corporation affirmed as under:

"With reference to paragraph 7 of the petition I dispute and deny the allegations. I say that the hotel provides entertainment with all items of music amusement etc. and is famous for its cabaret any allegation contrary thereto are denied. I say that before entering into the cabaret room one has to purchase a special ticket for admission on a very high price."

9. It is not disputed in the counter filed by the company in the special leave petition that the said restaurants in the evening provide piped music and sometimes vocal as well as instrumental music. The said restaurants also have dancing floors where the guests are allowed to dance to the tune of the music.

10. The admitted facts, therefore, are that there are dancing floors in the restaurants where the residents and other guests entertain themselves. The entertainment is further provided by music including vocal music. At the relevant time the cabaret shows were also performed in the restaurant to entertain the guests. In the counter filed in this Court the company has, however, stated that cabaret shows are done on rare occasions like Christmas and New Year eve etc.

11.A "dancing hall" cannot operate without obtaining a licence under Section443 of the Act. What is a dancing hall? A dancing hall as understood in the ordinary parlance is a place where dancing floor

is provided and live orchestra or music in any other form is played to entertain the guests who wish to come on the floor and dance. Dancing halls are peculiar to the Western social life. In the cosmopolitan cities in this country, even today, one finds number of dancing halls and discotheques where people go in the evenings and entertain themselves. We see no difference in a "dancing hall" and a restaurant where a proper dancing floor is provided and the guests entertain themselves by using the floor to the tune of live or recorded music. Simply because the recreation in the shape of dancing is provided along with a posh-eating place would not make it different than a "dancing hall" where drinks and eatables are also invariably provided. We are, therefore, of the view that the restaurants run by the company are places similar to the dancing halls and, as such, are places of public amusement covered by the provisions of Section 443 of the Act.

12. We allow the appeal, set aside the impugned judgment of the Division Bench of the High Court and dismiss the writ petition of the company filed before the Calcutta High Court. 'The appellants shall be entitled to costs which we quantify as Rs 20,000.