

Before the Maharashtra State Commission for
Protection of Child Rights.

Enquiry, under section 13(1) & 14 of the child
right protection act, 2005

Case No.228 / 2013-14

Shri. Amit Maru ... Applicants

V/s

<u>Police Commissioner, Pune</u>	<u>...Respondent No.1</u>
<u>Municipal Commissioner, Pune</u>	<u>...Respondent No.2</u>
<u>Collector, Pune</u>	<u>...Respondent No.3</u>
<u>Hotel River view at Pune</u>	<u>...Respondent No.4</u>

Background

Mr. Amit Maru, a social activist has filed a complaint alleging that police with connivance of corrupt and dishonest public servants are allowing consuming liquor illegally to children and students in hotels and pubs. It is alleged in the complaint that during police raid at hotel River View at Mundhwa, Pune, about seven hundred children were found consuming liquor and at Maya Lounge many students were present.

2. The Complainant has alleged that police officers are regularly taking *hapta* therefore they did not take any heed on the illegal activities as going on in their respective areas. Owner of hotels, pubs are paying *hapta* (bribe) to the police.

The issues as raised in the complaint are being placed as follows :

“First : No Action taken against conniving police staff or local police station : It is an administrative requirement that where raids are conducted by central unit officers or senior officers, then stern action is required to be taken against the local officers. It is seen that such activities have been taking place in open view of public and often advertised in papers and the internet without knowledge of local police and the beat staff, it is impossible to carry on these illegal activities. Since they are regularly taking payments i.e. *haftas*, therefore never give any heed on these activities. In the report a copy of the web printout showing the advertisement that in Maya Lounge such parties were held every Saturday is annexed with complaint.

Second : Dens operating illegally for long – powerful politicians and police officers role required to be probed.

Third : Liquor permissions given without following rules hence officers of Excise Department responsible.

Fourth : Licences given by Commissioner of Police for River View Hotel under section 33 of the Bombay Police Act, 1951 without verification of town planning rules and access rules.

Fifth : Licences and permissions given by Commissioner of Pune Municipal Corporation for River View Hotel could be without verification of town planning rules and access rules.

Sixth : Licences and permissions given by Sub Division Magistrate Pune under the Bombay Police Act, 1951, for Maya Lounge may not be consistent with rules.

Seventh : Maya Lounge given permission to construct by Pune Municipal Corporation – Scrutiny of Plans required.

Eight : Chief Fire Officer permission to River View would need to be examined since it seems in contravention of rules.

3. Complainant has produced print items, establishing that minors were being served liquor during time of raid. Both the hotels where incident happened, do not have licence to serve liquor. Complainant has submitted a circular issued by the department of Prohibition and Excise of the Government of Maharashtra which deal kind of permit to serve liquor like Neera and Tadi. The circular says that:-

Enforcement of prohibition, i.e., detection, investigation, etc., of offences under the Act is entrusted to the Police Department. Besides the administration of the Acts, the department need to plans and arranges prohibition propaganda. Social workers of repute are required to be appointed at regional levels as Divisional Honorary Prohibition Organisers and they need to attend the work of prohibition propaganda by addressing meetings and impressing upon the masses the evil effects of intoxicants. Director of Prohibition and Excise is responsible for the general supervision of the prohibition propaganda work carried on by the departmental officers. The Collectors shall

have certain functions under the aforesaid Acts such as issue of licences, permits, etc., and they are subordinate to the Director of Prohibition and Excise in respect of such functions. Functions of these departments are confined to licensing, inspection of licences and the enforcement of various controls enacted under the Acts, particularly under the Bombay Prohibition Act. The officers of the department have also to do propaganda on total prohibition and the various advantages derived there from amongst the people in the State and to supervise and organise recreation centres in their charges and to co-operate with the Police Department, in their duties of prevention and detection of prohibition crimes. The excise staff is responsible for the supervision of branded manufactories, warehouses, neera centres and management of Government liquor and drugs sale depots and inspection of various excise licences. They are also required to associate themselves in increasing measures with the ameliorative and social side of the prohibition campaign, and to tighten the loopholes, where such exist. Briefly, they are responsible for control, propaganda and ameliorative work. Their work now is more or less of a liaison and supervision type and has educative value.

4. Though officers of the Prohibition and Excise Department of and above the rank of Sub-Inspector have been vested with powers to investigate offences, these officers generally pass on the information of the commission

of offences and hand over the cases, if any, detected by them to the Police for investigation. The Home Guards Organisation also assists the Police in this work. Under Section 134 of the Prohibition Act, village officers, officers of other departments of State Government and officers and servants of local authorities are bound to give information to the police of breaches of the provisions of the Act, which may come to their knowledge and also to prevent the commission of breaches of the provisions of the Act about which they may have knowledge. Under Section 133, officers and servants of local authorities are also bound to assist any police officer or person authorised to carry out the provisions of the Act. Under Section 135, occupiers of lands and buildings, landlords of estates, owners of vehicles, etc., are bound to give notice of any illicit tapping of trees or manufacture of liquor or intoxicating drug to a magistrate, prohibition officer or police officer as soon as it comes to their knowledge.

5. All revenue officers of and above the rank of Mamlatdar or Mahalkari, all Magistrates and all officers of the Department of Prohibition and Excise of and above the rank of Sub-Inspectors have been authorised, under Section 123 of the Prohibition Act, within the limits of their respective jurisdictions, to arrest without a warrant any person whom they have reason to believe to be guilty of an offence under the Act, and to seize and detain any article of contraband. The officer so authorised, when he arrests any person or

seizes and detains any articles, has to hand over such person or articles without unnecessary delay to the officer in charge of the nearest Police Station.

6. The Commission listed this matter for hearing, issued notices to police commissioner, Pune, District Collector, Pune, Commissioner Municipal Corporation, Pune, owner of Hotel Riverview, Foods and Drugs Administration, Pune, Superintendent Rural police, Pune. The submission has been filed by the Representative of Jonas Holdings Pvt. Ltd. saying that vide agreement dated 16/3/2007, owner of Hotel River View entrusted the business of Hotel Riverview to Jonas and also given property on lease as mentioned in the said agreement, to Jonas therefore Jonas can file the reply on behalf of Hotel River View. In the submission, issue has been raised regarding the jurisdiction of Commission mentioning that rights of children has not been violated therefore Commission has no jurisdiction and refuted the charges, denying the service of liquor to minor and also said that incident has been misreported by press.
7. Mr. Maru has filed rejoinder in response to affidavit filed by M/s Jonas Holding Pvt. Ltd. and submitted some more documents in order to establish his case as evidence. Mr Maru has also sought time to file detailed reply and contended that matter is well within the jurisdiction of the Commission. Complainant has submitted Video recorded statement of the police officer given to media ABP Majha

which say that in the party after the raid 80% minors / school children were detained who were under influence of alcohol, after that Police had handed them to their parents as they were minor.

8. Police inspector who appeared before the Commission submitted letter dated 24/1/2012 addressed to Superintendent of Police, Rural, Pune against application of N.O.C. from Ms.Anjali Nirmal. Contents of letter is as follows:

"सदर हॉटेल माया या ठिकाणाला आम्ही स्वतः भेट दिलेली असून सदर ठिकाणचा दोन पंचासमक्ष सविस्तर पंचनामा करण्यात आलेला आहे. सदर हॉटेलला दगडी भिंतीचे वॉल कम्पाउंड आहे. हॉटेलचे एकूण क्षेत्रफळ 10300 स्क्वे. फुटाचे असून हॉटेलचे समोरील बाजुस मुबलक अशी पार्कींगसाठी जागा सोडण्यात आलेली आहे. हॉटेलमध्ये योग्य त्या सुविधा उपलब्ध आहेत. तसेच हॉटेलमध्ये एफ एल-3 च्या अनुषंगाने लागणाऱ्या सुविधा उपलब्ध करण्यात आलेल्या आहेत. सदरचे हॉटेल पुणे नगर महामार्गावरून 250 मीटर दुरवर आहे. हॉटेलच्या आजुबाजुस कोठेही धार्मिक स्थळ, शाळा, हॉस्पिटल नाहीत. तसेच हॉटेलच्या आजुबाजुस राहणाऱ्या दोन महिला व तीन नागरिकांचे जबाब नोंदविण्यात आले असून सदर हॉटेलला एफ एल-3 चा परवाना देण्यास हरकत नसलेबाबत त्यांनी कळविले आहे.

इकडील रजिस्टरची पाहणी करता अर्जदार सौ. अंजली रजनिश निर्मल यांचेविरुद्ध गुन्हा दाखल नाही. तसेच त्यांना दंड अगर शिक्षा झालेली नाही. तसेच भारतात कोठेही त्यांचेविरुद्ध गुन्हा दाखल नाही व कोणत्याही कोर्टात दंड अगर शिक्षा झाली नसलेबाबत त्यांनी प्रतिज्ञापत्र सादर केलेले आहे. यातील अर्जदार यांचे हॉटेल माया साठी केवळ वाघोली तंटामुक्त समिती यांनी हरकत दाखला दिलेला आहे. परंतु याबाबत तंटामुक्ती अध्यक्षांकडे वारंवार खात्री

करण्याची प्रयत्न केला परंतु ते चौकशीस येण्यास टाळाटाळ करित आहेत. त्यामुळे सदर प्रमाण पत्रा बाबत खातरजमा होवु शकत नाही.

तसेच अद्याप सदर हॉटेलची जागा अकृषिक घोषित झालेली नाही. तसेच ग्रामपंचायत वाघोली यांचा नाहरकत बाबतचा ठराव पास होणे बाकी असुन महीला बचत गट वाघोली यांची नाहरकत अद्याप अर्जदार यांना मिळालेली नाही. एफएल 3 परवाना साठी या बाबींची पुर्तता होणे अत्यंत आवश्यक आहे. सदर बाबींची पुर्तता न झाल्याने सदर हॉटेलला एफएल 3 चा परवाना देण्यात येवु नये असे आमचे मत आहे."

9. Superintend of Excise Department has submitted his reply as follows :

"मे. हॉटेल रिव्हर व्ह्यु, कोरेगाव पार्क, मुढंवा, पुणे या ठिकाणी तात्पुरती एक दिवसीय क्लब अनुज्ञप्ती दि.25/08/2012 रोजी करिता मिळावी म्हणून मे. जॉन होल्डींग प्रा.लि. या कंपनीच्या वतीने बॅकेट मॅनेजर श्री.अहमद शेख यांनी दि. 24/08/2012 रोजी निरीक्षक, राज्य उत्पादन शुल्क, अे विभाग यांचे मार्फत या कार्यालयास अर्ज केला होता. अर्जदाराने जागा मालकाची संमत्ती, विहित नमुन्यातील अर्ज, नकाशाच्या प्रती, शासकीय शुल्क इ. आवश्यक कागदपत्रांची पुर्तता केली होती. निरीक्षकांनी संबंधीताचा जबाब अभिलेखित केला होता. त्यामध्ये 21 वर्षा खालील मुलांना सौम्य बिअर देवू नये. तसेच शासनाच्या इतर विभागाच्या परवानग्या घेणे बंधनकारक राहिल याची जाणीव करुन दिली होती. संबधिताने आवश्यक ते शुल्क रु.8,050/- चलन क्र.1024, दि.24/08/2012 अन्वये शासकीय कोषागारात भरणा केले असल्यामुळे त्यांना तात्पुरती (एफएल-4) अनुज्ञप्ती मंजूर करण्यात आली होती. त्यावेळी त्यांना 21 वर्षाखालील व्यक्तिंस मद्य सेवनास देण्यात येवू नये. तसेच मद्य साठा मंजूर जागेतच ठेवावा. तसेच कायदा व सुव्यवस्थेचा प्रश्न निर्माण होणार नाही याची दक्षता घ्यावी. शिल्लक मद्यसाठ्याची माहिती द्यावी असे त्यांना कळविण्यात आले होते. अनुज्ञप्ती मंजुरीवेळी नकाशामध्ये मद्य सेवनासाठी स्वतंत्र जागा मंजूर करण्यात येत असते.

त्याठिकाणी मद्य साठा ठेवण्यात येतो व तो सेवनासाठी उपलब्ध करून देण्यात येत असतो.

तक्रारदाराच्या अर्जातील परिच्छेद क्र.3 बाबत सादर करतो की, उक्त ठिकाणी अल्पवयीन मुलांना मद्य सेवन करण्यासाठी दिले जात आहे याबाबत प्रतिवादींना कोणीही तक्रार केलेली नव्हती. पोलीस विभागाने त्या ठिकाणी कारवाई केलेली आहे. पोलीस विभागाने हॉटेल माया वाघोली, पुणे येथे केलेल्या कारवाईत अल्पवयीन मुलांना मद्य पुरवठा होत असल्याची बाब निदर्शनास आलेली नाही. तसेच हॉटेल रिव्हर व्ह्यु, मुढंवा, पुणे या ठिकाणी पोलीस विभागाने केलेल्या कारवाईत मुंबई पोलीस कायदा तसेच सिगारेट व तंबाखुजन्य उत्पादने कायद्याखाली गुन्हे नोंदविलेले आहेत. त्यातील सर्व आरोपी 18 वर्षावरील आहेत. तक्रारदाराने पुणे मिरर या वर्तमानपत्रात आलेल्या बातमीच्या आधारे अल्पवयीन मुले धुम्रपान करताना आढळून आली असे नमुद केले आहे ते चुकीचे आहे. सदर ठिकाणी नियमानुसार मद्य विक्री करण्यासाठी आवश्यक असलेली एक दिवसीय तात्पुरती क्लब अनुज्ञप्ती मंजूर करण्यात आलेली होती. अर्जदारास 21 वर्षांखालील व्यक्ति मद्य सेवनास देण्यात येवू नये असे स्पष्ट सुचना लेखी स्वरूपात देण्यात आल्या होत्या. अनुज्ञप्ती मंजूरीवेळी नकाशामध्ये मद्य सेवनासाठी स्वतंत्र व बंधिस्त जागा मंजूर करण्यात आलेली आहे. त्या ठिकाणी मद्यसाठा ठेवला जातो व तो सेवनासाठी आयोजक उपलब्ध करून देत असतात. आयोजकांनी कोणत्याही प्रकारचे भारतीय बनावटीचे विदेशी मद्य (अल्कोहोल 42.8%) खरेदी केलेले नव्हते. तर त्यांनी केवळ सौम्य बिअर (अल्कोहोल 5% पेक्षा कमी) खरेदी केलेले होते व त्यातील केवळ दोन बॉक्सचे सेवन झालेले आहेत. आयोजकांनी 13 बॉक्स कार्यालयात जमा केलेले आहेत. सदर कार्यक्रमांमध्ये सर्व गटातील वयाची मुले व मुली होते.

तक्रारदाराच्या अर्जातील परिच्छेद क्र.5.3 बाबत सादर करतो की, दोन्ही ठिकाणी राज्य उत्पादन शुल्क विभागातील अधिकाऱ्यांची पाहणी केली व त्यानंतरच सदर ठिकाणी एक दिवसीय तात्पुरत्या क्लब अनुज्ञप्त्या मंजूर करण्यात आलेल्या आहेत.

यापुर्वी माया हॉटेल, वाघोली येथे अवैध मद्य बाळगल्या प्रकरणी मुंबई दारुबंदी कायदा 1949 अन्वये गुन्हा रजिस्टर नं.276/2011, दि. 30/11/2011 रोजी नोंदविलेला आहे. मुंबई दारुबंदी कायदा 1949 अंतर्गत महाराष्ट्र विदेशी मद्य (रोखीने विक्री व विक्रीची नोंदवही) 1969 (सुधारणा) नियम 2007 अन्वये पोलीस आयुक्त कार्यक्षेत्रात एफएल-3 अनुज्ञप्ती चालू ठेवण्याची वेळी रात्री 1.30 वाजेपर्यंत तर ग्रामीण भागात रात्री 11.30 वाजेपर्यंत अशी आहे. पोलीस विभागाने मे.माया हॉटेल येथे कारवाई केलेली आहे. त्यामुळे त्याठिकाणी मुंबई दारुबंदी कायदा 1949 अन्वये पुन्हा स्वतंत्र गुन्हा त्याच प्रकरणात नोंदवण्याची आवश्यकता नाही असा अभिप्राय जिल्हा शासकीय अभियोक्ता यांनी दिलेला आहे. मुंबई दारुबंदी कायदा 1949 अन्वये मे. हॉटेल रिव्हर व्ह्यु, मुंबई, पुणे येथे झालेल्या कार्यक्रमांच्या अनुषंगाने दुय्यम निरीक्षक, राज्य उत्पादन शुल्क, अे विभाग यांनी गुन्हा रजिस्टर नं. 71/1012 नोंदविलेला आहे. उक्त ठिकाणी पोलीस विभागाने मुंबई पोलीस कायदा, सिगारेट व तंबाखुजन्य उत्पादने कायद्यान्वये गुन्हे नोंदविलेले आहेत.

मे. हॉटेल माया, वाघोली, पुणे या ठिकाणी दि.01/09/2011 रोजी तात्पुरती एक दिवसीय क्लब अनुज्ञप्ती मिळावी म्हणून श्री.व्यंकटेश पोनगड्डी यांनी दि. 30/08/2012 रोजी दुय्यम निरीक्षक, राज्य उत्पादन शुल्क, जी विभाग यांचे कार्यालयामार्फत अर्ज केला होता. आवश्यक कागदपत्रांची पूर्तता केल्यामुळे त्यांना तात्पुरती एलएल-4 अनुज्ञप्ती मंजूर करण्यात आही होती. पोलीस विभागास प्राप्त झालेल्या माहितीच्या अनुषंगाने त्यांनी उक्त ठिकाणी मध्यरात्री कार्यवाही करून मुंबई दारुबंदी कायदा 1949 अन्वये कार्यवाही केलेली आहे. सदर पार्टी व घडलेल्या घटनेच्या अनुषंगाने या कार्यालयाद्वारे मुंबई दारुबंदी कायदा 1949 अन्वये स्वतंत्रपणे कार्यवाही करता येईल किंवा कसे याबाबत जिल्हा शासकीय अभियोक्ता, पुणे यांना विचारणा केली असता त्यांनी या प्रकरणात पुन्हा गुन्हा नोंदविणे कार्यशिर होणार नाही असा अभिप्राय दिलेला आहे."

Submission as placed by Excise & police department, does not say anything pertaining to the serving liquor to children.

The photographs as submitted by the complainant Mr. Maru is corroborating that children have been served liquor.

10. Provision of three set of laws such as the Commission for Protection of Child Rights Act 2005, Bombay Prohibition Act and Bombay Police Act and United Nation Conventions on Child Rights and National Charter for children, 2003 are applicable in this matter. Provisions of Bombay Police Act, Excise Act has^{we} been discussed in the plaint in detail. So far issues No. 1 to 8 as raised by complainant in the plaint are concern, these are related with the procedure as being adopted for issuing the licence to run and establish business trade, etc. Therefore these are not required to be discussed at this stage.

10. Issues which are needed to be appreciated in this matter are as follows :

- i. Whether serving liquor to the minor children is criminal wrong.
- ii. Whether rights of children are being violated by serving them liquor.
- iii. Whether law enforcing authorities police & excise department have failed to perform it's duty.

Answers regarding points raised as above are :

Re. Question No. 1 : Under the provisions of Bombay Prohibition Act serving liquor to the children is prohibited and violation of the Act is amount to criminal wrong.

Re. Question No. 2 : Under the Section 23 of Juvenile Justice Act and clause 10(a) of National Charter for children, serving any type of intoxicating material is violation of rights of children.

Re. Question No. 3 : Media report reveal that law enforcing authorities have failed to perform their duty.

10. Under above circumstance and after going through the legal provisions the Commission's recommendation is as follows :

I) The State Government is directed to investigate this matter by constituting a committee consisting officers from the police department not below the rank of D.I.G. and Excise department not below the rank of Jt. Commissioner and submit status report. The term of reference of the committee shall be (a) To ascertain the responsibility of the officers who are responsible to supervise the compliance of conditions of licences issued to run hotel and serve liquor in this matter (b) To ascertain the facts, in term of serving liquor to the children in the hotel Riyerview and Maya Lounge

By order and seal of the Commission.



31.10
(A.N.Tripathi)

I.F.S.

Secretary

Maharashtra state commission for
protection of child rights