

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.06.2016

Pronounced on : 27.06.2016

CORAM

The Hon'ble Mr.Justice M.V.MURALIDARAN

W.P.No.18548 of 2016

and

WMP.No.16244 of 2016

Netwin Sport Club,
Rep. By its Secretary,
R.Senthilkumar,
SF.No.432, D.No.3/874,
Min Nagar, Palladam,
(Oppt. To Kongu Mandapam),
Tiruppur District.

... Petitioner

Vs.

1.The Superintendent of Police,
Tirupur District.

2.The Assistant Commissioner,
Excise, Tirupur.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, forbearing the respondents, their men, agents and officials from interfering with the right of the members of the petitioner club to play Cards and Rummy.

For Petitioner : Mr.R.Singaravelan, Senior Counsel
for M/s.Srividhya

For Respondents: Mr.K.Karthikeyan
Government Advocate

O R D E R

The petitioner has filed the above writ petition forbearing the respondents, their men, agents and officials from interfering with the right of the members of the petitioner club to play Cards and Rummy.

2.The case of the petitioner is that the petitioner is the sports club registered under the Tamil Nadu Societies Registration Act, 1975 (Tamil Nadu Act 27/1975) and the same was formed on 18.05.2009. The object of the formation of the petitioner society is to entertain friends and other members to get mental relief and also promote social relations to keep high moral among the members. Further, the object of the petitioner society is to increase the skill of members in the following games viz., Carom, Chess, Playing Cards (Rummy), Table Tennis, Kabady, Cricket, Volleyball, Snooker, Billiards, Knock-out, Library, etc., without any monetary gain to the member of the society or any other person.

3.Considering the objects which is clearly revealed under a memorandum and thereafter the Registrar of the Cooperative Society has approved the bye-laws of the society and allowed the society to get registration under the above Act.

4.Further, the case of the petitioner is that though the petitioner is registered society, it has got every right to run the society to achieve the above objects in the interest of the members. He also stated that from the date of registration i.e. 18.05.2009 till date there is neither any complaint nor any problem created against the society. In fact, the society members are professionally Doctors, Lawyers and Officers of different categories and the said society has strictly functioning in accordance with law.

5.It is the case of the petitioner that the respondents 1 and 2 oftenly visited the club and made accuse the governing body unjustifiably and unnecessarily when CCTV cameras were attached to the club and they were very well check up the same through the photos and videos. The respondents 1 and 2 made allegations against this society that the members of the petitioner society are played cards for monetary gain. But, without noting the said cameras, the respondents made allegations that the members are played with money, but the case of the petitioner is that which was played only for fun and mental relief.

6.The petitioner also come forward the allegations that the respondents 1 and 2 without even any prior intimation to the petitioner society club oftenly sent their officials to enter into the club premises and disturb the games played by the members by saying that the members of the club is playing cards and rummy with money. Due to the continuous harassment from the respondents 1 and 2, this petitioner has approached this Court and filed a writ petition in W.P.No.21788 of 2015 with a prayer seeking to issue a writ of Mandamus forbearing the respondents, their men, officials and agents from interfering with the affairs of the petitioner club particularly the games played by

its members in accordance with the objects incorporated in the Memorandum of the petitioner society.

7. Considering the petitioner's case initially, this Court passed an order in the light of the ratio laid down by this Court in a decision reported in 2012 (1) CTC 274 holding that the game of Rummy is mainly and predominantly a game of skill and therefore, the members of the club can play Rummy with stakes, which cannot be called a gambling, therefore, this Court by an order dated 22.07.2015 directing the respondents not to interfere with the affairs of the club and played rummy inside the club. After receiving notice, the respondents filed their counter and this Court passed final order on 29.07.2015 is as follows:-

"4. Since the issue is squarely covered by the Judgments of this Court in Anandham Manamagil Mandram, Theni District V. The Superintendent of Police, Theni District and others, 2009 (4) CTC 264 and in Blue Star Cultural Association, Chennai V. The Commissioner of Police, Chennai City and others, 2014 (1) CTC 592, the Writ Petition is disposed of with the following directions:-

(i) The Petitioner and the members of the Club are entitled to carry on lawful activities within their premises and there should not be any interference from the Police authorities, so long as their activities are not in violation of the provisions of the Public Gambling Act, 1867 (Tamil Nadu Gaming Act, 1930);

(ii) In the normal circumstances, there should be no interference in the lawful functioning of the Clubs by the Police. It is not permissible for the police to enter the Club premises as a routine measure, so long as the Clubs are functioning within the frame work of law;

(iii) If the Police authorities have specific information or reasonable doubt that the activities carried on by the Club or its members are not in accordance with law or they indulge in unlawful activities in violation of the provisions of the Public Gambling Act, 1867/Tamil Nadu Gaming Act, 1930 or any reasons in the General Diary maintained in the Police Station, interrogate those who involve themselves in such activities and take appropriate action on merits and as per law;

(iv) While exercising the powers conferred on the Police authorities, they should follow the mandatory provision as contained in Section 5 of the Tamil Nadu Gaming Act, 1930 / Public Gambling Act, 1867;

(v) It is always open to the Club or its members to challenge the action taken by the Police, if it was not in accordance with law;

(vi) In case the Police authorities were of the opinion that a situation has arisen to suspend the operation of the Club in exercise of the powers conferred, they have to issue an order in writing. When there is so authority granted to the Police to issue an order of suspension orally, they are not entitled to pass such oral orders; and

(vii) Before passing orders for the purpose of closure of the Club, in exercise of the powers conferred on the authorities, they should follow the principles of natural justice. The Club should be given an opportunity to submit their objections and if so desired, a further opportunity to personal hearing should also be give. Consequently, M.P.No.1 of 2015 is closed. No costs."

8.It is the case of the petitioner is that even after the order passed by this Court, the respondents again and again enter into the club even on 09.04.2016 when the members taking their food along with their family members were questioned and harassed and the respondents seized the cards and other items and the cars of the members were also attacked. This incident was recorded in the CCTV cameras attached in the club and the same will be proved against the high handed act of the police. Therefore, this petitioner has come forward before this Court and filed writ petition seeking to issue a writ of Mandamus forbearing the respondents, their men, agents and officials from interfering with the right of the members of the petitioner club to play Cards and Rummy.

9.The respondents filed counter affidavit stating that there is no Table Tennis, Kabadi ground, Volleyball ground, Cricket ground, Snooker, Billiards, Knock out, Library, etc. without any of the above said facilities, there is no possibility to run the club legally. The respondents also stating that during the raid conducted on 09.04.2016, the persons found indulging in gambling

were not the members of the club and they were not professionally Doctors, Lawyers, Officers, etc. The respondents also denied that the respondents have not made any frequent visit in the petitioner club, but the club was raided only on specific and reliable information about gambling. Though, this Court passed an order in W.P.No.21788 of 2015 dated 29.07.2015, as per the above order, it is stated that if the Police authorities have specific information or reasonable doubt that the activities carried on by the club or its members are not in accordance with law or they indulge in unlawful activities in violation of the provisions of the Public Gambling Act, 1867 / Tamil Nadu Gambling Act, 1930 or any other enactment, it would be open to the respondents, after recording the reasons in the General diary maintained in the Police Station, to proceed to enter the club premises, conduct investigation, interrogate those who involves themselves in such activities and take appropriate action on merits and as per law. Therefore, as per the above direction given by this Court, the respondents / Police stated that after entries made in the General diary they were conducted raid on 09.04.2016 based on the reliable and confidential information about gambling being conducted in the petitioner's club while a police investigating team headed by A.D.S.P., P.E.W., Tirupur. During the said raid, they were arrested 39 persons for gambling with cards, seized cash Rs.7,84,435/- and 13 Cars. Based on the offence, a case was registered in Palladam Police Station in Cr.No.407 of 2016 under Section 8 and 9 of Tamil Nadu Gaming Act. Later on, the charge sheet was filed before the Judicial Magistrate, Palladam and the same was taken on file in STC.No.1422 of 2016. The said Court convicted and fined against the accused persons in numbering 39 and the said fine were paid by the said persons. By suppressing the above said fact, the petitioner filed the above writ petition before this Court.

10.Heard Mr.R.Singaravelan, learned senior counsel for M/s.Srividhya appearing for the petitioner and Mr.K.Karthikeyan, learned Government Advocate appearing for the respondents.

11.As per the earlier order of this Court in W.P.No.21788 of 2015 dated 29.07.2015, if the respondents/Police have received any specific information or reasonable doubt, they should make entry in the General diary maintained by the Police Station and then only they should proceed to raid the petitioner club. But the respondents / Police alleged that on 09.04.2016 they made entry in the General diary and thereafter only raid the petitioner club. But, there is no evidence filed before this Court to prove the above.

12.As per the petitioner's case, they were doing only legal activities by playing rummy as per the bye-laws which was approved by the Registrar of Cooperative Societies and also as

per the orders of this Court made in the above writ petition and they were not indulged in any illegal activities and not playing rummy with money.

13. During the course of arguments, the respondents submitted that the petitioner club was closed and as on date the club is not running, but for that there is no evidence produced before this Court. As per this Court orders in W.P.No.21788 of 2015 dated 29.07.2015, if the Police authorities were of the opinion that a situation has arisen to suspend the operation of the Club in exercise of the powers conferred, they have to issue an order in writing. When there is no authority granted to the Police to issue an order of suspension orally, they are not entitled to pass such oral orders.

14. As per the direction of the respondents, the petitioner club was closed. But, it is the bounden duty of the respondents to raid the club only as per the orders issued by this Court in the above writ petition. But, no such order for raiding or for closure of the club has been produced before this Court.

15. When this Court make a specific direction to the respondents / Police in the light of the ratio laid down by this Court in a decision reported in 2012 (1) CTC 274 (Mahalakshmi Cultural Association, represented by its Secretary, Chennai .. vs.. The Director General of Police, State of Tamil Nadu and others) in which holding that the rummy is a game of skill and therefore, the members of the club can play rummy with stakes, which cannot be called as gambling, the respondents should not interfere with the playing of the rummy by the members of the club as per the said ratio laid down by this Court in the above said decision.

16.If at all any raid is made, they should issue notice to the petitioner club and thereafter make any raid or investigation. The respondents also is bounden duty to follow the ratio laid down in the above decision reported in 2012 (1) CTC 274 and also follow the orders of this Court in W.P.No.21788 of 2015.

17. Therefore, I am of the considered opinion that the petitioner has made out a case before this Court and accordingly, the respondents are directed not to interfere with the right of the members of the petitioner club to play cards and rummy and the respondents shall not interfere in the lawful functioning of the club and it is not permissible to the police to enter in the premises of the club in the routine measure so long as the club is functioning without crime of law, subject to following the Judgments rendered in 2012 (1) CTC 274 and W.P.No.21788 of 2015 dated 29.07.2015.

18. Accordingly, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

vs

s/d-
Assistant Registrar(CS-VII)

True Copy

Sub-Assistant Registrar

To

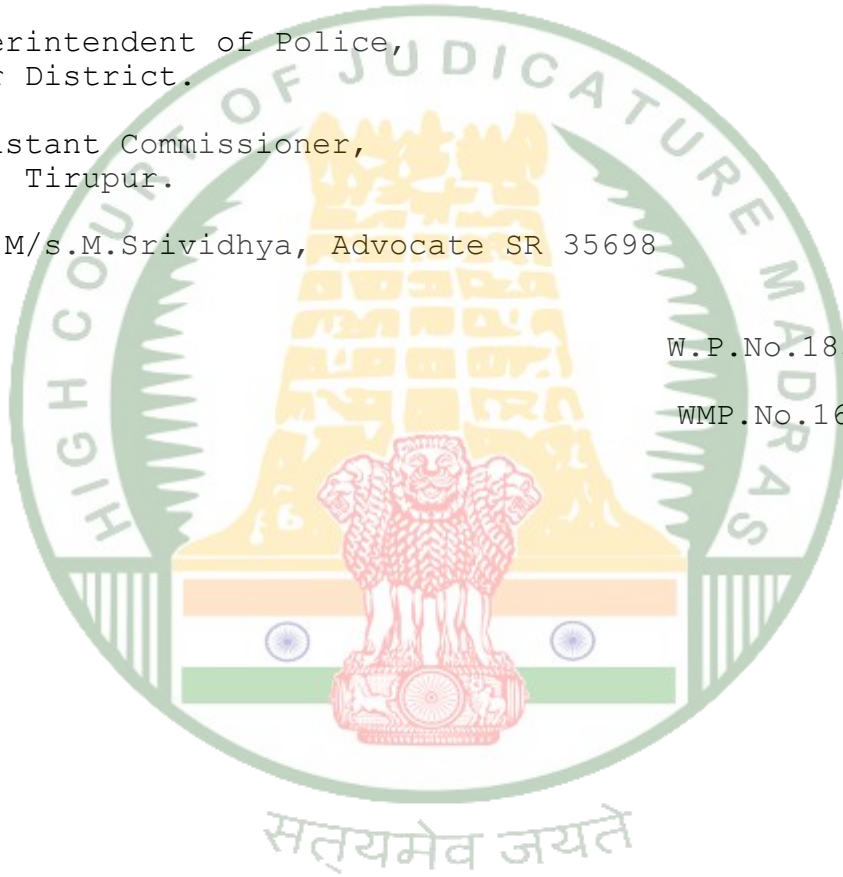
1.The Superintendent of Police,
Tirupur District.

2.The Assistant Commissioner,
Excise, Tirupur.

+ 1 cc to M/s.M.Srividhya, Advocate SR 35698

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