

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2018

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.26708 of 2017

S.Gobinath
S/o.Sundaresan
President

Bhavani Welfare Club Erode
6/962, K.K.Nagar, Kalingarayanpalayam,
Bhavani - 638 301, Erode.

.. Petitioner

versus

1. The Superintendent of Police
Office of the Superintendent of Police
Erode District, Erode.

2. The Deputy Superintendent of Police
Bhavani
Erode District.

3. State rep. by
Inspector of Police
Chithode Police Station
Chithode
Bhavani, Erode District.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, forbearing the respondents from in any manner interfering with the affairs of the petitioner's club Bhavani Welfare Club Erode as SI.No.94/2017 situated at No.6/962, K.K.Nagar, Kalingaraynapalayam, Bhavani-638 301 or its members including the facilities provided for playing various games including the game of playing rummy not involving any element of gambling.

For Petitioner: Mr.C.S.Saravanan

For Respondents: Mr.S.Soundararajan
Government Advocate for R1 to R3

O R D E R

The petitioner seeks for a Mandamus forbearing the respondents from interfering with the affairs of the petitioner's club Bhavani Welfare Club Erode situated at

No.6/962, K.K.Nagar, Kalingaraynapalayam, Bhavani-638 301 or its members including the facilities provided for playing various games including the game of playing rummy not involving any element of gambling.

2. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents.

3. The learned Government Advocate, based on instructions, submitted that there is no previous case registered against the petitioner Club.

4. It is seen that the issue involved in this case is covered by a recent order passed by the Hon'ble Division Bench of this Court in WA.No.296 of 2013 dated 06.10.2017. The said writ appeal was filed against an order passed in WP.No.2972 of 2012 dated 05.03.2012. The said writ petition was disposed of by the learned Single Judge with the following directions :

a) The petitioner association shall not indulge in any illegal activity other than playing Rummy (13 cards) with stakes by its members and guests;

b) If there is any evidence of gambling in some other way, the respondent police have a right to enter the premises of the petitioner's association, inspect and take further action as per law;

c) The respondent police are also advised not to disturb the petitioner association frequently under the guise of inspection as it would disturb the peace harmony of the petitioner association.

d) The petitioner and the members of the petitioner 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;

e) 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;

f) 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 other enactment, it would be open to them, after recording reasons in

the General Diary maintained in the Police Station, to proceed to enter the Club premises, conduct investigation, interrogate those who involve themselves in such activities and take appropriate action on merits and as per law;

g) 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;

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

i) In case the Police authorities are 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 to the Police to issue an order of suspension orally, they are not entitled to pass such oral orders; and

j) 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 of personal hearing should also be given.

5. Challenging the said order, the above writ appeal was filed by the respondents Police. The Hon'ble Division Bench agreed with the contention of the appellants insofar as the directions issued in Clause (a) & (e) are concerned and found that they are unsustainable. At Paragraph Nos. 8 & 10, the Hon'ble Division Bench has observed as follows:-

"8. We find much force in the contention of the learned Special Government Pleader that the respondent-Association by virtue of the order of the learned Single Judge cannot prevent the Police Personnel to do their lawful duty. Therefore, the order passed by the learned Single Judge with regard to directions (a) & (e) are unsustainable.

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10. Considering the fact that gambling is an evil and it is rampant, that gaming houses flourish as profitable business and that detection of gambling is extremely difficult. Further, in view of the Judgment of Constitution Bench of the Hon'ble Supreme Court in State of Bombay vs. R.M.D. Chamarbagwala, (referred supra) and the reasons mentioned above, we are of the considered view that the order passed by the learned

Single Judge insofar as the directions (a) & (e), are not sustainable and the same are set-aside and the other directions given by the learned Single Judge remain unaltered. "

6. Thus, from the above order of the Hon'ble Division Bench, it is evident that except Clause (a) & (e), the other directions issued by the learned Single Judge remain unaltered and therefore, this Court is of the view that the present writ petition arising out of the same facts and circumstances can also to be disposed of by following the above decision of the Hon'ble Division Bench.

7. Considering the above stated facts and circumstances, this writ petition is disposed of by issuing the following directions:

i) If there is any evidence of gambling in some other way, the respondent police have a right to enter the premises of the petitioner's association, inspect and take further action as per law;

ii) The respondent police are also advised not to disturb the petitioner association frequently under the guise of inspection as it would disturb the peace harmony of the petitioner association.

iii) The petitioner and the members of the petitioner 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;

iv) 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 other enactment, it would be open to them, after recording reasons in the General Diary maintained in the Police Station, to proceed to enter the Club premises, conduct investigation, interrogate those who involve themselves in such activities and take appropriate action on merits and as per law;

v) 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;

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

vii) In case the Police authorities are 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 to the Police to issue an order of suspension orally, they are not entitled to pass such oral orders; and

viii) 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 of personal hearing should also be given.

No costs.

Sd/-

Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

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To

1. The Superintendent of Police
Office of the Superintendent of Police
Erode District, Erode.
2. The Deputy Superintendent of Police
Bhavani
Erode District.
3. Inspector of Police
Chithode Police Station
Chithode
Bhavani, Erode District.

+ 1 cc to Mr.C.S.Saravanan Advocate,SR.16865
+ 1 cc to The Govt.Pleader, SR.17106

W.P.No.26708 of 2017

nr 20/03/2018