

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2018

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THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.27775 of 2014 and

M.P.No.1 of 2014

Shri Mangalam Recreation Club
rep by its Secretary R.Hari
No.3/4-A, Thirumalai Garden,
Ganapathypalayam, Mangalam Post,
Tiruppur District.

... Petitioner

Vs.

1. The State of Tamil Nadu
rep by its Secretary to Government,
Home Department, Fort St. George,
Chennai - 600 009.

2. The Superintendent of Police,
Tiruppur - 641 603.

3. The Deputy Superintendent of Police,
Dharapuram, Tiruppur District.

4. The Inspector of Police,
Mangalam Police Station,
Tiruppur District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus forbearing the respondents from interfering with the day to day affairs of the petitioner club without any reasonable basis, including that of the petitioner's lawful cultural and recreational activities in its premises at No.3/4-A, Thirumalai Garden, Ganapathypalayam, Mangalam Post, Tiruppur District.

For Petitioner : Mr.K.Govi Ganesan

For Respondents : Mrs.P.Rajalakshmi,
Additional Government Pleader

O R D E R

The petitioner Club is registered under the Societies Registration Act with Registration No.71/2014. There are about 50 members in the Club, who are respectable family members from the vicinity. It is being run as per rules and regulations. As the petitioner Club is formed to keep hospitality, promote education, culture, sports and recreation, it is not done with profit motive. They have also decided to start a library, to promote sports and to help the poor people.

2.The members of the petitioner Club needs privacy in their recreational activities and the frequent inspection by the police personnel from the 4th respondent Police Station causes huge inconvenience to the members and guests visiting the petitioner Club. Due to the frequent surprise visits not only during day time, but also beyond evening time, the purpose of formation of the Club is itself severely defeated. In this regard, the petitioner has also given a representation not to unnecessarily inspect the Club in untimely, but the same has been ignored by the respondents. Hence, the petitioner was advised to come to this Court seeking mandamus to direct the respondents from interfering with the day to day affairs of the petitioner club.

3.The learned counsel for the petitioner has submitted that in similar circumstances, this Court in W.P.No.220022 of 2013 has passed an order on 31.10.2013 giving a clear direction to the police authorities not to disturb similarly placed clubs by frequently inspecting in odd hours.

4.It is seen that the issue involved in this case is covered by an order passed by the Hon'ble Division Bench of this Court in W.A.No.296 of 2013 dated 06.10.2017. The said Writ Appeal was filed against an order passed in W.P.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.

9.

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. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
State of Tamil Nadu,
Home Department, Fort St. George,
Chennai - 600 009.
2. The Superintendent of Police,
Tiruppur - 641 603.
3. The Deputy Superintendent of Police,
Dharapuram, Tiruppur District.
4. The Inspector of Police,
Mangalam Police Station,
Tiruppur District.

+lcc to Mr.K.Govi Ganesan, Advocate, S.R.No. 35617
+lcc to the Government Pleader, S.R.No. 35873

W.P.No.27775 of 2014 and
M.P.No.1 of 2014

SAI (CO)
BM 29/06/2018



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