

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2018

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.15610 of 2018

R.Sivakumar

.. Petitioner

-vs-

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

2. The Deputy Superintendent of Police
Erode District

3. Inspector of Police
South Police Station
Erode District

.. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, forbearing the respondents from in any manner interfering with the affairs of the petitioner's club "Erode Star Recreation Club Private Limited" as Corporate Identity Number of the Company is U74999TZ2018PTC030241 situated Erode Star Recreation Club Private Limited, S.F.No.141/1, P.S.Nagar, Palayapalayam, Erode 638 011 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.E.Balamurugan
Special Government Pleader

ORDER

The petitioner seeks for issuance of a writ of mandamus forbearing the respondents from in any manner interfering with the affairs of the petitioner's club "Erode Star Recreation Club Private Limited" as Corporate Identity Number of the Company is U74999TZ2018PTC030241 situated Erode Star Recreation Club Private Limited, S.F.No.141/1, P.S.Nagar, Palayapalayam, Erode 638 011 or its members including the facilities provided for

playing various games including the game of playing rummy not involving any element of gambling.

2. The case of the petitioner is that he is the Managing Director of the Erode Star Recreation Club Private Limited and the same was registered under the Companies Act, 2013 with Corporate Identity No.U74999TZ2018PTC030241. The members of the club are actively taking part for the advancement of the objects of the club as found in the bye-laws. The members are provided recreation in the club for developing mutual friendship among the members of the club. The club members are jointly involving themselves in various social activities. While so, the act of the respondents in preventing the members of the club from playing the game of rummy is arbitrary. Therefore, the petitioner is before this Court seeking the above prayer.

3. The learned Special Government Pleader appearing for the respondents placing on record a judgment dated 06.10.2017 passed by the Division Bench of this Court in W.A. No.296 of 2013, would submit that the stake involved in playing the game of rummy amounts to gambling.

4. In reply, the learned counsel for the petitioner would submit that some of the members of the petitioner's club are playing rummy with stakes which does not amount to gambling and in any event, he undertakes that the petitioner's club will not indulge in playing cards with stakes.

5. Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents.

6. 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 the above 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.

7. Challenging the above order of the learned single Judge,

the above Writ Appeal was filed by the respondent Police. The Hon'ble Division Bench agreed with the contention of the appellants insofar as the directions issued in Clauses (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."

8. Thus, from the above order of the Hon'ble Division Bench, it is evident that except clauses (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.

9. In view thereof, recording the undertaking made by the learned counsel for the petitioner to the effect that the petitioner's club will not indulge in playing cards with stakes, 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 club, inspect and take further action as per law;

ii) The respondent police are also advised not to disturb the petitioner's club frequently

under the guise of inspection as it would disturb the peace harmony of the petitioner club.

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/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Superintendent of Police
Office of the Superintendent of Police
Erode District
2. The Deputy Superintendent of Police
Erode District
3. Inspector of Police
South Police Station
Erode District

+1cc to the Government Pleader, S.R.No.41917

W.P.No.15610 of 2018

CS/10/07/18

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