

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2019

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.8133 of 2019
and
WMP.No.8715 of 2019

Padi Recreation Club
Regn.No.46/2017
Rep. by its President
S.Mariasusai, S/o.K.Saminathan
No.457, C.T.H.Road, Pattabiram
Chennai-600 072. ... Petitioner

versus

1. The Commissioner of Police
Greater Chennai Police, Veppery
Chennai-600 007.
2. The Additional Commissioner of Police
(North & West)
O/o. Commissioner of Police
Greater Chennai Police,
Vepery, Chennai-600 007.
3. The Deputy Commissioner of Police
Ambattur District at Avadi
Chennai-54.
4. The Assistant Commissioner of Police
Pattabiram Range at Thirunindravur-602 024.
Tiruvallur District.
5. The Inspector of Police
T-9, Pattabiram Police Station
Pattabiram, Chennai-72. ... Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, forbearing the respondents herein from preventing the members of the petitioner's Club playing the game of Rummy along with Carom Board, Table Tennis, Chess, Gym, Billiards and Library at No.457, C.T.H.Road, Pattabiram, Chennai-600 072.

For Petitioner : Mr.C.Prakasam
For Respondents : Mr.E.Balamurugan
Special Government Pleader

O R D E R

Mr.E.Balamurugan, learned Special Government Pleader takes notice for the respondents. By consent of both parties, the writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner seeks for a Mandamus forbearing the respondents herein from preventing the members of the petitioner's Club playing the game of Rummy along with Carom Board, Table Tennis, Chess, Gym, Billiards and Library at No.457, C.T.H.Road, Pattabiram, Chennai-600 072.

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

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

5. 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.

6. 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.

"

7. 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.

8. 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, connected miscellaneous petition is closed.

Sd/-/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mkmk

To

1. The Commissioner of Police
Greater Chennai Police, Veppery
Chennai-600 007.
2. The Additional Commissioner of Police
(North & West)
O/o. Commissioner of Police
Greater Chennai Police,
Veppery, Chennai-600 007.
3. The Deputy Commissioner of Police
Ambattur District at Avadi
Chennai-54.
4. The Assistant Commissioner of Police
Pattabiram Range at Thirunindravur-602 024.
Tiruvallur District.
5. The Inspector of Police
T-9, Pattabiram Police Station
Pattabiram, Chennai-72.

+1cc to Mr.C.Prakasam , Advocate SR.No. 27052

+1 cc to Government Pleader SR.NO. 26877,20858

W.P.No.8133 of 2019

MN (CO)

A.SK(23/04/2019)

WEB COPY