

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 22247 of 2019

Date of Decision: 19.12.2019

Surinder Kumar and others

...Petitioners

Vs.

State of Punjab and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. P.S. Jammu, Advocate
for the petitioners.

RAJIV NARAIN RAINA, J. (Oral)

1. This petition deserves to be dismissed for manifold reasons recorded in this order.

2. The first reason is that invocation of the fundamental right “to practice any profession or to carry on any occupation, trade or business” by the petitioners guaranteed under Articles 19 (1) (g) or the freedom of "trade, commerce and intercourse" preserved under Article 301 of the Constitution is wholly misconceived in the context of trade of betting and gambling including the business of Online Lotteries in view of the authoritative judgment of the constitution bench in The State of Bombay vs R. M. D. Chamarbaugwala, AIR 1957 SC 699 the Supreme Court holding that such activity is extra-commercium and hence not included within the meaning of 'trade, commerce or intercourse' and hence no citizen has a fundamental right to do business in gambling or lotteries. Lotteries business is regulated by the State

Governments by policies framed in this behalf. The Online Lottery policy has not been placed on record for the perusal of the Court. As a matter of fact, I believe there would be no need to look at the policy in view of the nature of the prayers made in this petition asking the indulgence of this Court for a general and aimless direction to the police authorities in Bhatinda not to harass the 15 petitioners who have approached this Court without laying any foundation for such a request in running their businesses.

3. A vague statement and bald one has been made in paragraph 16 of the petition [pointed out by the counsel that the local police has time and again raided the premises of the “petitioner” and has shut and padlocked the shops run by the petitioner/s depriving them to carry on their trade. No date or time is averred in the body of the petition which is hopelessly drafted only for filing purposes. I have peered through and beyond the petition but find nothing substantial to evoke judicial interest.

4. It is alleged in the petition that respondent No.4-SHO Police Station Kotwali, Bathinda, District Bathinda raided the shops of the “petitioner” on 10.6.2019 without any legal approval and worse even that no videography of the raids conducted on the shop premises of the petitioners without due authority of law to serve as substantive evidence. The material particulars of the police raids taken against all the petitioners is not mentioned in intelligible terms as is brought forth

from the use of the word “petitioner” used in the singular and not in the plural in paragraph 16, which paragraph is the mainstay of the case set up by the petitioners for claiming relief by way of a roving writ to the unspecified and unnamed police officials in the Memo of Parties to desist from such excessive action which is not sanctioned by law. The allegation, therefore, becomes a seriously disputed question of fact which may not be possible to deal with in summary writ jurisdiction exercised by this Court under Article 226 of the Constitution of India without the benefit of tested evidence.

5. Another reason why I would not venture to interfere in this matter is that there is no direct imputation of threat of “life and liberty” of the petitioners [as the prayer goes] calling for non-coercive action and freedom from harassment at the hands of the police. If they feel threatened in carrying on their business of online lotteries they have remedies available to them other than writ jurisdiction and can freely approach the court under Section 482 of the Code of Criminal Procedure, 1973 [the 'Code'] for directions or such other remedy as may be available in law to them including invoking Section 154 (4) of the Code. If the life and liberty of the petitioners is not jeopardized or directly affected, a writ of mandamus would not ordinarily issue to the respondents and, therefore, the petitioners, without curtailing their perceived rights, would be at liberty to take such protective steps as they may like to pursue them in the civil courts or by way of remedy

available before the Police Complaints Authority against excesses.

6. Though there is a prayer referring to the petitioner's rights under Article 300A of the Constitution but I do not read any property rights in the online lottery business run by the petitioners. Moreover, this Court in CWP No. 1064 of 2019, Chavi Goyal and others Vs. State of Punjab and others decided on 24.01.2019 filed by petitioners therein who also ran their lottery businesses from their respective shops/premises in Dhuri, Sangrur mainly complaining that Senior Superintendent of Police, Sangrur, the Deputy Commissioner, Sangrur and the SHO of the disputed territory were obstructing and restraining the petitioners, in one way or the other, from running the lottery business and for which the petitioners, otherwise, have necessary authorization from the State Government. In that petition also the relevant material was not placed on record to substantiate the case that those petitioners were retailers appointed by the distributors/stockists of the marketing agents which had been authorized by the Punjab State Lotteries Department to bring in revenue to the State exchequer through indirect taxes.

7. To overcome this hurdle, the petitioners in the present petition had filed an application for leave of court to produce the delivery challans and bills generated from the computers etc. of their business dealings being documents placed from Annex 7 to 10 in continuation of the documents attached to the writ petition. These

documents may at best support the case that petitioners were authorized to do business in online lotteries, but nothing more than a tad, especially with reference to the utterly vague prayers made in this petition which all read together are wholly disassociated from the principal direction sought in the prayer clause at the foot of the petition for relief against the unlawful acts of the local police department and for restraining them from harassing the petitioners in conducting their business without any factual basis.

8. Quite apart from the rest, there is no order impugned in the petition for this court to examine and review. The petition must fail on this account as well.

9. For these reasons, this court finds that the petition is devoid of merit and is not maintainable and is accordingly dismissed with liberty to the petitioners to avail their alternative remedies, as may be advised.

(RAJIV NARAIN RAINA)
JUDGE

19.12.2019

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Whether speaking/reasoned : Yes
Whether reportable : Yes/No