

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/WRIT PETITION (PIL) NO. 146 of 2020

FOR APPROVAL AND SIGNATURE:

HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH Sd/-

and
HONOURABLE MR. JUSTICE J.B.PARDIWALA Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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AMIT M NAIR
Versus
STATE OF GUJARAT

Appearance:

MR BHARGAV HASURKAR(5640) for the Applicant(s) No. 1
ADVANCE COPY SERVED TO GOVERNMENT PLEADER/PP(99) for the
Opponent(s) No. 1

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CORAM: HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH
and
HONOURABLE MR. JUSTICE J.B.PARDIWALA

Date : 29/09/2020

ORAL JUDGMENT**(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)**

1. By this writ application under Article 226 of the Constitution of India filed in public interest, the writ applicant, a practicing advocate, has prayed for the following reliefs:

“(A) Hold and declare playing on online gambling in Virtual Space/World Web/Cyber Space, through Mobile Applications as well as through Computers more particularly “online rummy” to be bad and illegal as much as it is in violation of the provisions of Section 4 and 5 of The Gujarat Prevention of Gambling Act, 1887:

(B) Pending admission, hearing and final disposal of this petition, pass orders to ban/restrict “online gambling”, “online rummy” in the State of Gujarat;

(C) To pass any other and further orders as may be deemed fit and proper to this Hon'ble Court.”

2. The case put up by the writ applicant, in public interest, may be summarized as under:

2.1 It is pointed out by the writ applicant that the “online gambling” websites/mobile apps (applications) are mushrooming at an alarming level. It is pointed out that several “online gambling” apps are promoted and targeted in the State of Gujarat too. Such gambling platforms are thus engaged in illegal activities, however, the same remains unchecked/uncontrolled owing to certain deficiencies in the Gujarat Prevention of Gambling Act, 1887.

2.2 The provisions of the Bombay Prevention of Gambling Act, 1887 was enacted for the purpose of the prevention of gambling in the erstwhile State of Bombay. The provisions of the Act,

1887 were adopted and made applicable to the State of Gujarat. Article 246 of the Constitution of India refers to the legislative power between the Union and the State Legislatures and the distribution of such power is to be found in the 7th Schedule of the Constitution. “Betting and Gambling” fall within the Entry No. 34 of List II (State List) in the 7th Schedule of the Constitution of India, which would empower the State Legislature to legislate in respect to the subject matter. Each State Legislature is empowered to enact the laws in so far as gambling is concerned.

2.3 It is pointed out to us by the learned counsel appearing for the writ applicant that one would get to see several advertisements of the gambling websites while accessing mobile applications and social media on smart phones. Such advertisements would entice individuals with small amount as credit to start playing rummy promising lakhs of rupees in return. Such incentives lure the people to indulge in gambling and, ultimately, get addicted to the same.

2.4 It is in the aforesaid context that according to the writ applicant, the present legal framework in reference to the gambling should be regulated to include the virtual or online/Cyber space aspect. This, according to the learned counsel, would ensure that the online activities, so far as gambling is concerned, would be amenable to the jurisdiction of the law enforcing authority.

2.5 The writ applicant has placed on record ample materials to indicate the growing menace of “online gambling”.

3. Mr. Hasurkar has also brought to our notice many

important articles on the subject. One such article at Annexure-G, Page 80/A reveals that the online Rummy is a Rs.2,200/- Crore industry in India, accounting for half of the country's online gaming business. It is further stated that it comes with serious problems. The players tend to get addicted to it, often exhausting themselves and their money. The players tend to game the system by colluding with other players.

4. A lot was argued as regards the issue whether Rummy is a game of skill or not. There need not be any debate on this issue as Rummy is a game of skill as held by the Supreme Court, for the first time, in the case of State of **Andhra Pradesh vs. K. Satyanarayana & Ors.**, reported in AIR 1968 SC 825 and later followed in the case of **K.R. Lakshmanan vs. State of Tamil Nadu & Ors.**, reported in AIR 1996 SC 1153. However, the moot question is whether what is being played is “Rummy” in its true sense or it is just pure and simple gambling. This again would depend on individual facts of the case.

5. The problem today is that in the absence of appropriate amendments in the provisions of the Act, 1887, no check or action is being taken when it comes to “online gambling”.

6. In the aforesaid context, we may refer to the definition of the term “Common Gaming-House” as defined under Section 4 of the Act, 1887. The same reads thus;

“[(1)] Whoever—

(a) [opens, keeps or uses any house, room or place], for the purpose of a common gaming-house,

(b) being the owner or occupier of any such house, room or

place knowingly or wilfully permits the same to be opened, occupied, kept or used by any other person for the purpose aforesaid,

(c) has the care or management of, or in any manner assists in conducting the business of, any such house, room, or place opened, occupied, kept or used for the purpose aforesaid,

(d) advances or furnishes money for the purpose of gaming with persons frequenting any such house, room or place, [shall, on conviction, be punishable with imprisonment extend to two years] and with fine:

[which may Provided that—

(a) for a first offence such imprisonment shall not be less than [three months and fine shall not be less than five hundred rupees];

(b) for second offence such imprisonment shall not be less than [six months and fine shall not be less than one thousand two hundred rupees]; and

(c) for a third or subsequent offence such imprisonment shall not be less than 26[one year and fine shall not be less than two thousand rupees.]] ”

7. The plain reading of the aforesaid definition would indicate that it is completely silent on the aspect of “online gambling”, more particularly, “online rummy”, meaning thereby that an individual would get arrested only if he is caught playing rummy/cards outside/in a gambling den in the State of Gujarat, whereas an individual playing “online rummy” cannot be arrested or booked for the offence of gambling.

8. Mr. Hasurkar, the learned counsel is right in his own way that a comprehensive regulatory framework is necessary to regulate the “online gambling/rummy” and to curb any illegal

activities as well.

9. We have also indicated above that rummy, in its true sense, if played, is not gambling but then it is always argued that what was being played was rummy and not gambling.

10. In the aforesaid context, our attention has been drawn to a Division Bench decision of the Madras High Court in the case of **The Director General of Police, State of Tamil Nadu vs. Mahalakshmi Cultural Association**, reported in 2012 (2) CTC 484, wherein the Court has observed as under:

"15. Though the members of the Association are entitled to play the game of skill i.e., rummy (13 cards), the question still remains as to whether at the guise of playing rummy with 13 cards, either the members or the guests could be allowed to play the said game with stakes. The term "gaming" refers to the instances in which the activities are specifically permitted by law. On the other hand, the term "gambling" means wagering or betting of money or something material value on an event with uncertain outcome with primary intent of winning additional money and or material goods. Gambling can also be understood as an act of playing for stakes in the hope of winning or a game risked for possible money. In the event a game is played for stakes, it would amount to wagering or betting resulting either in loss or win.

16. The evil effects of Gambling finds it's reference even in epics. Shakuni, Duryodhana's uncle, in Mahabharata, arranges a dice game, playing against Yudhishtira with loaded dice. Yudhishtira loses all his wealth, then his kingdom. He then even gambled his brothers, himself and finally his wife into servitude. The jubilant Kauravas insult the Pandavas in their helpless state and even try to disrobe Draupadi in front of the entire Court, but her honour is saved by Krishna who miraculously creates lengths of cloth to replace the ones being removed.

21. Playing of cards perhaps may be for relaxing oneself or for an entertainment provided such play has limitations.

Playing of cards with stakes has two evils i.e., it corrupts the mind of the players to become addict and it makes most of the players bankrupt. Discussions above undoubtedly point against the practice of indulging in gambling, be it rummy or other similar games, where wagering or betting is involved. We may also refer to the ordinary use of the expression "winning". The word "winning" has been given the following meaning in the Universal Dictionary of English Language, namely, "Amount won, esp. money won in betting." In the Oxford English Dictionary, the word "winning" is given the following meaning, namely, "Things or sums gained, gains, profits, earnings in mod.use chiefly applied to money won by gaming or betting." In Webster's Third International Dictionary, the word "winning" is given the following meaning, namely, "Something one wins esp. the money won by success in competition." Therefore, in the event a place is used for gambling, it will be termed to be a gambling house and such gambling would amount to an illegal activity in the event the member or the guests or the club/association make profit out of such gambling. The object of the Association is also to allow the members to play cards not amounting to gambling.

24. On the basis of the above discussions, we arrive at the following conclusions:-

- (1) The game of rummy (13 cards) is only a game of skill even though an element of chance is also involved.*
- (2) In the event rummy is played by the members or the guests without stakes, the provisions of the Chennai City Police Act are not attracted.*
- (3) In the event rummy is played by the members or the guests with stakes, the provisions of the Chennai City Police Act are attracted.*
- (4) In the event the club/association either allows its members or guests to play rummy with stakes or make any profit or gain out of such gambling, the Police has the authority to invoke the provisions of the Chennai City Police Act.*
- (5) In order to ascertain as to whether the premises is used as a gaming house for gambling, the Police is entitled to invoke [Section 23](#) of the Act. “*

11. Our attention has also been drawn to one order passed by

the Delhi High Court dated 28th November, 2019 in the Writ Petition (C) Nos. 5661 of 2019 and 11472 of 2019 respectively in the case between **M/s. Deepati Bhagat vs. Union of India & Anr.**, wherein the Delhi High Court disposed of the writ petitions, observing as under;

“7. Looking to the facts and circumstances of the case, we hereby direct the respondent nos. 1 and 2 to treat this writ petition as a representation. Respondent nos. 1 and 2 will take a decision as to whether the websites, which are referred to in paragraph 28 of WP(C) No. 5661/2019 are to be banned or not and whether any such similarly situated websites which are encouraging gambling activities are to be banned or not. The decision will be taken by the respondent nos. 1 and 2 or such other department of Union of India, in accordance with law, rules, regulations and Government policy as applicable to the facts of the present case, as early as possible and practicable.

8. We also direct the respondent no. 6 in WP(C) No. 5661/2019 Government of NCT of Delhi to treat this writ petition as a representation and to take a decision if any particular game(s) referred to, in these writ petitions, in accordance with law, rules, regulations and Government policy as applicable to the facts of the present case are a game of chance or a game of skill. Taking note of the fact that if these games involve gambling and if they are being played in Delhi then it is required to be dealt with by respondent no. 6, as gaming is a subject matter of List – II of Schedule VII of the Constitution of India. Thus, if any website is operating in Delhi or is engaged in any gambling games, the same will be dealt with by the respondent no. 6, in accordance with law, rules, regulations and Government policy as applicable to the facts of the present case and the decision as to whether they should be banned or not, will be taken by the respondent no. 6, as early as possible and practicable.

9. If the Union of India and the respondent no. 6 are of the opinion that the aforementioned gaming is gambling, then, a reasoned order will be passed and the same will be implemented at the earliest, in accordance with law, rules, regulations and as per the Government policy as applicable

to the facts of the case. Such order will also be communicated to the petitioners.

10. The Union of India as well as State Authority will also keep in mind while examining the representation, whether such games result in money-laundering or violation of laws relating to foreign exchange, as well as, if any avoidance of taxes is involved or not, in the gaming activities operated through the websites as narrated in the memo of the writ petition.”

12. What is important for us to take note of is the Telangana Gaming Act, 1974. The amended definition of “Common Gaming-House” in the Act, 1974, more particularly, Section 2(1)(i)(f) reads thus;

“(f) on any transaction or scheme of wagering or betting in which the receipt or distribution of winnings or prizes, in money or otherwise, is made to depend on chance, any house, room, tent, enclosure, vehicle, vessel[cyber space] or any place whatsoever in which the gaming takes place or in which the horses or other instruments of gaming, are kept or used for such gaming;

[(ii) in the case of any other form of gaming, any house, room, tent, enclosure, vehicle, vessel, cyber space or any place whatsoever in which any instruments of gaming are kept or used for the profit or gain of the person owning, occupying, using or keeping such house, room, tent, enclosure, vehicle, vessel, cyber space or any place, whether by way of charge for the use of such house, room, tent, enclosure, vehicle, vessel, cyber space or any place or instruments of gaming or otherwise howsoever;

Explanation:- For the purpose of sub-clause (ii), any premises or place or cyber space belonging to or occupied by a club, society, company or other association of persons, whether incorporated or not, which is used or kept for purposes of gaming shall be deemed to be a common gaming house notwithstanding that there is no profit or gain for the club, society, company or other association of persons on account thereof;

(2) “gaming” means playing a game for winnings or prizes in money or otherwise and includes playing a game of mutka or satta [or online gaming for money or any other stakes] and lucky board and wagering or betting, except where such wagering or betting takes place upon a horse-race-

(i) on the day on which the horse-race is to be run ;

(ii) in an enclosure which the stewards controlling the horse-race 6[or race meeting] have, with the sanction of the Government set apart for the purpose ; and

(iii) (a) with a licensed book maker ; or

(b) by means of a totalisator ;

but does not include a lottery ;

Explanation.—For the purpose of this clause-

[(i) Wagering or betting shall include,-

(a) collection or soliciting of bets;

(b) the receipt or distribution of winnings or prizes in money or otherwise in respect of any wager or bet;

(c) any act which is intended to aid, induce, solicit or facilitate wagering or betting or such collection, soliciting, receipt or distribution;

(d) any act of risking money, or otherwise on the unknown result of an event including on a game of skill;

(e) any action specified in sub-clause (a) to (d) carried out directly or indirectly by the players playing any game or by any third parties;]

(ii) “totalisator” means a totalisator in an enclosure which the stewards controlling a race meeting have set apart in accordance with sub-clause (ii) and includes any instrument, machine or contrivance known as the totalisator or any other instrument, machine or contrivance of a like nature or any scheme for enabling any number of persons

to make bets with one another on the like principles;

[(iii) “race meeting” means a meeting held for the purpose of horse racing at a race course within the State of Telangana and includes a meeting held at such race course for the purpose of betting on any horse race at any other race course outside the State.] ”

13. The plain reading of the amended definition of “common gaming-house” in the Telangana Act of 1974 would indicate that “gaming” includes online gaming for money or any other stakes. The explanation, referred to above, would indicate that for the purpose of sub-clause (ii), any premises or place or cyber space belonging to or occupied by a club, society, company or other association of persons used or kept for the purposes of gaming is deemed to be a common gaming-house. The definition of the term “common gaming-house” as defined under Section 4 of the Act, 1887 also needs to be amended appropriately so as to include the “online gambling” within its ambit.

14. Internet gambling presents essentially many of the same concerns that the traditional gambling activities have raised throughout the years: uneasiness about the morality of the activity; the likelihood of addiction; the possibility of fraud; and the conflict between the state versus central regulations. The questions of morality primarily surface in connection with the Internet gambling's accessibility to children because children have potentially unlimited access to the computers and the Internet. It is possible that without proper monitoring they may access to the gambling Websites as readily as they could access the indecent materials. The supporters of a ban of Internet gambling maintain that outlawing the activity for all individuals is the only way to ensure that a segment of the population,

children, will be adequately protected from corruption.

15. Thus, in the overall view of the matter, we have reached to the conclusion that the writ applicant has pointed out something very important in public interest, but the question is, to what extent, we can impose upon the State Government to do the needful. It is not permissible for us, in exercise of our writ jurisdiction under Article 226 of the Constitution, to direct the State Government to enact a particular type of legislation to take care of the situation. However, we can always draw the attention of the State Government to all the aforesaid facts so that the State Government can look into the matter at the earliest and do the needful in accordance with law.

16. Ms. Manisha Luvkumar Shah, the learned Government Pleader has appeared on behalf of the State on an advanced copy of the petition being served in the office of the Government Pleader. Ms. Shah fairly submitted that the issue raised in this public interest litigation is of utmost importance and the Government shall look into the same at the earliest in accordance with law. Ms. Shah would submit that let this writ application be treated as a representation and the same shall be duly considered by the Government in accordance with law.

17. We propose to dispose of this writ application on the very same line like the one of Delhi High Court, referred to above, by directing the State of Gujarat to treat this writ application as a representation and do the needful in the larger public interest.

18. Our final order is as under:

(I) We direct the State of Gujarat to consider this writ

application as a representation. If the online games involve gambling and if they are being played in the State of Gujarat, then it is expected of the State to deal with the same appropriately as gaming is a subject matter of List II of the Schedule VII of the Constitution of India.

(II) If any website is operating in the State of Gujarat or is engaged in any gambling games, the State shall deal with the same in accordance with law, rules, regulations and the policy, as may be applicable.

(III) The State shall also examine whether such games result in money-laundering or violation of laws relating to foreign exchange as well.

(IV) We expect the State Government to promptly look into the aforesaid issues and take an appropriate decision in accordance with law in larger public interest before it is too late.

(VIKRAM NATH, CJ)

(J. B. PARDIWALA, J)

Vahid