

(1998) 03 CAL CK 0050
In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction, C.O. No. 20973 (W) of 1993,

Guru Prasad Biswas and Another

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 22-03-1998

Acts Referred:

Constitution of India, 1950 — Article 13, 14, 19, 19(1), 21

Contract Act, 1872 — Section 18(2), 23, 30

Gaming (Amendment) Act, 1892 — Section 1

Gaming Act, 1845 — Section 18

Hyderabad Gambling Act, 1305 — Section 14

West Bengal Gambling and Prize Competitions Act, 1957 — Section 2A, 2B, 2C, 2D

Citation : (1998) 2 CALLT 215 : (1998) 4 RCR(Criminal) 794

Hon'ble Judges : Shyamal Kumar Sen, J

Bench : Single Bench

Advocate : Mr. Tapas Roy and Mr. U.P Mukherjee, for the Appellant; Mr. Arijit Chowdhury, Mr. R.K. Khanna, Mr. L.P. Sinha Roy, Mr. A.K. Gandhi and Mr. Fazlul Haque, Mr. S.L. Hazra and Mrs. Chameli Mazumdar, for the Respondent

Judgement

S.K. Sen, J.—In the instant writ petition the petitioners have challenged the betting and gambling of Horse Races

a) as immoral; and

b) crime and social evil degenerating the Society and the Nation.

The petitioners claim that they are Interested in the welfare of the Society and the petitioners are not trying to vindicate any personal right of them or to claim any personal benefit and the expenses of this proceedings are borne out by the petitioners personally. It was further been contended on behalf of the petitioners that the questions raised in this writ petition are questions of Constitutional obligation of the State, law and morality. The petitioners accordingly claim that the instant writ petition is in the nature of a public interest litigation.

2. As legality of betting and gambling on horse race has been questioned, the

proforma respondents Nos. 17, 18, 19, and 20 have been impleaded, as betting and gambling on horse race take place in those States. Proforma respondents Nos. 21 and 22 have been impleaded, as this petition relate to interpretation of the Constitution of India since it has been alleged that on proper Interpretation, several State and Central enactments may be held to be ultra vires. The respondent Nos. 23 and 24 have been impleaded, as the two articles with regard to the acts and deeds of the respondents No. 3, one published in The Statesman dated 3.8.91 and the other in The Telegraph dated 9.8.91 were published referring the petitioners concern about betting and gambling OQ Horse racing and led them to all Investigate and study about the subject matter of this petition and filing of the same as public Interest litigation. The said two respondents have been Impleaded so that they may place further materials before this court.

3. Respondent No. 15 has been Impleaded as a member of Royal Calcutta Turf Club.

4. There is a Race Course in the Maldan which is in the heart of the City of Calcutta. The said Race Course has got a huge big area with a big racing tracks and a big club house with galleries, stand and building. In the said Race Course horse racing take place and hundreds and thousands of people go there and particulars in betting and gambling on horses which run the horse races.

5. The following questions have been raised in this writ petition:

(I) is there any sanction for betting and gambling in public on a horse race within the framework of Constitution of India?

(II) Does the legislative entry in item 34 of list II of the Seventh Schedule to the Constitution of India authorise the State to make any law permitting an Association of persons, such as Club to carry on betting and gambling by conducting horse race at all without State control for minimising the vice of betting and Gambling on horse race? "

(III) Does the West Bengal Gambling and Prize Competition Act 1957 and the purported licence granted to the respondent No. 1 by the Home (Police) Department, Government of West Bengal on 21.5.88 provide any check or control to the Illegalities and immoralities inherently contained in betting and gambling upon a horse race and if not, are those ultra vires Articles 14 read with Articles 38(1), 46 and 51A of the Constitution of India?

(IV) in the facts and circumstances of the case, should the State be directed to either prohibit totally or to minimise the evils of betting and gambling on a horse race of preventing an unregistered association of persons, namely, the respondent No. 3 from running the horse race with betting and gambling or to take over the management and administration of the respondents No. 3 club with a view to provide sufficient check and balance to the social evil which originated from such betting and gambling and to channelise the Income out of such betting

and gambling to public welfare activities such as Improving the living condition of the poorer section of the people, providing them with basic education and medical aid as also such other activities such as setting up of Orphanage and Old Age Home which this court may deem fit and necessary for the common good and welfare of the people of the State?

6. It has been submitted by Mr. Roy, learned Advocate for the petitioner that before enacting the Race Course Betting Act 1928 and the Betting Act of 1926 the Parliament in England appointed a Select Committee in 1923 and the evidence adduced before the Committee on behalf of the National Free Church Council as to why all citizens should oppose the betting tax were as follows:--

1. A Tax on betting. In whatever form would involve legalising of betting, and therefore, a radical change in the principle of British Law.

2. Experience in the Dominions shows that an Increase in the volume of betting follows when State sanction and support are accorded.

3. Betting transactions are economically unsound destroying the sense of value, the obligation of steady industry and the spirit of thrift. A tax on betting would give the sanction of the State to practices opposed to the true economic Interests of the nation.

4. Legalising betting, as undermining the economic well-being of the Nation, would lead to ultimate loss, which would outweigh any immediate gain to the Revenue.

5. A new vested Interest would be created by the licensing or registering of book makers, which, like the vested interest of the liquor trade, would prove a hindrance to political and social progress.

6. It is the duty of the State to protect the youth of the Nation from the harmful effects upon character which result from addiction of betting. A tax on betting would, on the contrary give official sanction to this disastrous practice.

7. Betting is anti-social and opposed to the moral qualities essential to the Nation. Revenue obtained by strengthening and extending the social and moral evils of betting is revenue obtained at too great a cost-cost of the Nation's life.

7. It has been submitted on behalf of the petitioner during the years 1901-1902 a select committee was set up by the House of Lords in England in order "to enquire into the Increase of Public betting amongst all classes and whether any legislative measures are possible and expedient, for checking the abuses occasioned thereby". Mr. Roy learned advocate for the petitioners has referred to the evidence given before the committee as summarised by C.F. Shoolbred in his book "The Law of Gaming and Betting" as follows:

1. Betting had become more widespread. A decrease has taken place in large bets, but a larger public was betting in small sums.

2. it was impossible to stop betting unless horse racing were stopped, which was not considered desirable.

3. As a result of the Betting Houses Act (the Act of 1953) betting had been thrown out into the streets where it was greatly on the Increase. Public house betting was not prevalent, the risk of the loss of licence having proved an effective deterrent. Betting with woman and children was prevalent in some districts.

4. The local by-laws for obstructions were inadequate to put down street betting, the give pound fine proving quite ineffective, and even on occasions acting as an advertisement.

5. The publication of starting prices and tipsters advertisement in the Press were the cause of such betting. On the other hand, it was advocated that the publication of odds was the greatest check to fraud, cases having been known before their publication of bets being on horses already dead. In this respect it was stated in evidence before the committee that but for the intervention of the Crimean War, Lord Palmerston would have introduced legislation on this subject in 1853.

6. Betting had caused an increase in crime, especially in cases of embezzlement and fraud.

7. Great uncertainty had arisen as to the definition of "place" since the Kemton Park case.

8. The evils of betting were described by a large employer of labour in the following words: "..... It not only deteriorates the man morally but undermines his Industry and makes him sooner of later listless and careleds as to his work"

9. The licensing of Book makers was advocated by some witnesses as a check on welshing. The findings of the above committee resulted in the passing of the Street Betting Act 1906. Aimed as it was at the suppression of betting in streets and other public places, this statute increased the penalties for street Betting, enabled constables to arrest without warrant and defined "Street" and "Public Place".

8. Mr. Roy has further submitted that the Blackstone while speaking about gambling in his commentaries expressed as follows (Vol. IV. P. 171); "Next to that of luxury naturally follows the offence of gambling, which is principally Introduced to supply or retrieve the expenses occasioned by the former It being a kind of tacit confession that the company engaged therein do in general exceed the bounds of their respective fortunes, and therefore, they cast lots to determine upon whom the ruin shall at present fall, that the rest may be saved a little longer. But taken in any light, it is an offence of a most alarming nature, tending by necessary consequence to promote public idleness and debauchery among those of a lower class; and among persons of superior rank it hath

frequently been attended with the sudden ruin and desolation of ancient and opulent families, an abandoned prostitution of every principle of honour and virtue, and too often hath ended in self murder."

9. Mr. Ray has also referred to the observation of Sir Alexander Cockburn. While Introducing the Betting Act 1853 in the House of Commons the Attorney General Sir Alexander Cockburn stated "Servants-Apprentices and Workmen Induced by the temptation of receiving a large sum for a small one, take their few shilling to these places, and the first effect of their losing is to tempt them to go on spending their money. In the hope of retrieving their losses, and for this purpose it not in frequently happens that they are driven into robbing their masters and employers. There is not a prison or a house of correction in London which does not every day furnish abundant and conclusive testimony of the vast number of youths who are lead into crime by the temptation of these establishments, of which there are from 100 to 150 in the metropolis alone, while there is a considerable number in the large towns of the provinces."

10. Mr. Roy has further contended that the Supreme Court in several judgment deprecated cheat funds and lottery. These "chit funds" and "lotteries" are nevertheless some sort of "bet" or "gamble" and he has relied on the observations of the Supreme Court with regard to the legality and morality of gambling. Even if one can separate the element of betting and gambling from price chit fund, it is not possible to do so in respect to the acts complained of in this writ petition as also lottery.

11. Mr. Roy has further relied upon the following decisions:

(1) The State of Bombay Vs. R.M.D. Chamarbaugwala,

(2) Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. and others

And

Union of India v. Peerless and Ors.

And

Peerless Ltd. v. Reserve Bank of India

And

State of West Bengal v. Peerless Ltd. reported in AIR 1957 SC 1023.

12. It has been submitted By Mr- Tapas Roy learned Advocate on behalf of the writ petitioners that it would appear from the Statute Law and the history of enactments of the Statute Law in 17th. 18th and 19th century in England that at first in England, betting and gambling was treated as Illegal, Immoral and null and void, Then, as it appear that these have been held to be void being contracts, rendered void by Statute.

13. In this connection, the learned Advocate has referred to chapter 10 under the heading Contracts rendered void by Statute and Contracts illegal at common law on grounds of public policy. In this connection, he has also referred to chapter 11 of the Law of Contract by Cheshire, Flfoot and Furmston (11th edition).

14. It has been submitted by Mr. Roy that both in England and India Wagering Contracts have been held to be illegal or void.

15. He has further submitted that a look at the Indian society based on the fundamentals of Hindu Law and Mohammedan Law in India would show that Indian Society denounces betting and gambling as totally illegal, Immoral and a sin.

16. In this connection, he has referred to the observations of the Supreme Court in the case of The State of Bombay Vs. R.M.D. Chamarbaugwala,

17. He has further contended that even section 30 of the Indian Contract Act, 1872 provides that agreements by way of wager void but then it does not render unlawful a contribution made or entered into for or towards any bet price or sum of money to be awarded to the winner of any horse race.

18. In this connection, he has referred to the discussion in Chapter 12 of the Law of Contract by G.H. Treital (6th edition). He has also referred to the dictionary meaning of bet, gamble and wager. In this connection, the arguments advanced by Mr. Roy may be summarised as follows:

a) in all ages, in all countries betting and gambling have been considered to be illegal, Immoral and sinful.

b) Because betting and gambling in horse races was too much in the social life in England for the last two centuries, the view of the English people was that betting and gambling on horse race could not be stopped and as it was not possible to stop those, such betting and gambling on horse race has been allowed under strict control of the Crown and the nature of those control would appear from the legislations on the subject made in England from to time.

c) The British Colonies, of which India was one, were dominated by the British executives army officials and business people, most of whom were more intolerant to strict vires of an orthodox Britain. They introduced in the Colonies horse racing first as a sports then started betting and gambling on such horse racing. In course of time people started becoming addicted to such betting and gambling and therefore, an illegality otherwise was sought to be saved to the extent the same was connected with horse racing, by the Indian Contract Act of 1872 (2nd Paragraph of section 30 of the Act).

d) it may be made clear that even though betting and gambling on horse race has been saved by the aforesaid legislation it neither cured nor can be read as having the effect of curing betting and gambling on horse race. It is something

like keeping eyes shut on prostitution and allowing the prostitution to be carried on in the -Society because it is impossible to make the Society free from prostitution.

19. He has further submitted that in this writ petition the vires of the exception part in Clause (b) of section 2 and in sections 2A, 2B, 2C and 2D of the said Act are challenged on the ground that the said enactment permits and purports to legalise betting and gambling on horse race in West Bengal under certain conditions.

20. It is the contention of Mr. Roy that there is nothing in the Act to show that any new development has taken place in any manner so as to make betting and gambling on horse race legal. -

21. He has further submitted that betting remains betting, gambling remains gambling and vices of those by reason of which in India and in Indian Society betting and gambling have been held to be sinful, illegal and immoral do not cease to be so only because of protection or exception provided under the Act are satisfied.

22. In this connection, Mr. Roy has further contended as follows:

a) if it is not held that because of those conditions in the said definition of the West Bengal Act, the vice element in betting and gambling has ceased to be a social virtue in our Society then the next question would be whether in the background of the scheme of the Constitution of India by legislation such illegality, Immorality and sin could be protected and allowed to be perpetrated.

b) it seems that while enacting the said provisions in the West Bengal Act, blindly the provisions in section 30 of the Contract Act, 1872, a piece of legislation during the British Rule has been followed.

c) if there is no sanction under the Constitution of India to such perpetration of illegality Immorality in our Society, then the West Bengal legislature could not enact the said provisions in the said legislation of 1957 ignoring the Constitution of India. The Central legislature also was required to revise the Contract Act and other similar laws, if any, purporting to sanction, authorise or to give premium to a legislation like the one in section 30 of the Indian Contract Act in so far as the same sanction a wagering contract in connection with horse racing.

23. A question has been raised namely what is our Constitutional scheme, the Constitutional Law and whether encouragement to betting and gambling can be made within our Constitutional set up.

24. It has been contended by Mr. Roy that under our Constitutional set up, it is forbidden for the State to encourage betting and gambling as such betting and gambling is immoral for the Society and as such illegal and opposed to public policy. Under our Constitution, it is the duty of the State to remove whatever is forbidden, whatever is arbitrary, whatever is opposed to public policy and which

stands in the way of social Justice and results in or tends to loss of social and moral values and exploitation of the weaker section of the Society.

25. In this connection, he has also referred to be Directive Principles of State policy, particularly, the Paragraphs of Articles 38(1). 39(1) and 51A (f), (h) and (j) of the Constitution of India.

26. He has also submitted that Article 51A refers to Fundamental Duties, the duty of every citizen is to value and preserve our composite culture; to develop the scientific temper, humanism and the spirit of enquiry and reform; to strive towards excellence in all spheres of Individual and collective activity, so that the nation constantly rises to higher levels of endeavour and achievement.

27. It has also been submitted that under our Constitution there is a legislative entry being Entry No. 34 in List-II of the Seventh Schedule which reads "betting and gambling", and as betting and gambling can not be considered, as one in furtherance of the object in our Constitution, by taking recourse to the said entry the State is to provide for a law prohibiting, if not totally, at least to the extent possible, betting and gambling on horse race and keeping it within strict control, vigilance and surveillance of the State.

28. It has further been submitted by learned Advocate that a reading of Article 14 of the Constitution of India together with Articles 38(1), 46 and 51A of the Constitution of India would indicate that the above is the most minimum which the State is required to do.

29. It has been submitted on behalf of the writ petitioner that Entry No. 34 cannot be read as an entry or authorisation by the Constitution of India to the State to pass any law authorising, validating or permitting horse racing with betting and gambling on horse racing. It would be too much to speak of giving permission or providing authority to the State to permit a private Institution or association of persons in the form of a club or otherwise to Indulge in horse racing for the purpose of betting and gambling.

30. The petitioner has also contended that the Royal Calcutta Turf Club is enjoying a very big area for the purpose and facilities of its members and huge sum of money is earned by the Club but to whom the payment is made or what is the amount paid, is not known.

31. It has been submitted that the enactment in the West Bengal Gambling and Prize Competitions Act, 1957, to the extent the exception part of the definition gaming or gambling is concerned read with sections 2A, 2B, 2C and 2D are ultra vires Articles 14 and 21 and the Directive Principles and Fundamental Duties contained in the Constitution of India and particularly Articles 38(1), 39(1) and 51A (f) (h) (g) are concerned. Article 21 provides for a citizen's rights to life and a propagation to such betting and gambling affecting the morality in our special life is contrary to right to life. It seems, the provisions of the West Bengal Act challenged in this writ petition, were introduced by way of an amendment by the

West Bengal Act V of 1979. It would appear from the long title to the said 1957 Act that the same was enacted initially to consolidate and amend the law relating to the prevention of gambling and the Insertion of the provisions mentioned above by the West Bengal Act V of 1979 does not amount to prevention of gambling. On the contrary this purport to encourage gambling and betting.

32. It has also been contended that a look at the provisions of the said Act would Indicate that the relevant provisions in Clauses (1) to (iv) of section 1(1) (b) of the said West Bengal Act and also sections 2A to 2D thereof have no controlling effect on belting and gambling on horse racing.

33. In this connection, learned Advocate for the petitioner has referred to the observation of the Chief Justice Burger of the United States.

"We are approaching the status of an Imperfect Society where capability of maintaining elementary security in the Streets, in the Schools and for the Homes of our people is in doubt. At every stage of the criminal process, the system cries out for change."

34. He has also referred to the address of Lord Denning. In his address to the National Conference of the Law Society, part of which is set out:--

"When you look upon this scientific achievements, then look back for a moment on our world today, what do you see, crime, increasing everywhere, sins, disgraceful sins, corroding corruption increasing everywhere. When we see this surely we recall the words of 2000 years ago-what doth it profit a man if he gains the whole world and loses his own soul."

35. The learned Advocate for the petitioner, in this connection has also relied upon the judgment and decision of the Supreme Court in the case of The State of Bombay Vs. R.M.D. Chamarbaugwala, . He has submitted that the Directive Principles of the State policy enjoin upon the State the duty to strive, to promote the welfare of the people by securing and protecting, a social order in which Justice, social, economic and political shall be rendered to all institutions of the national life.

36. He has further submitted that the Directive Principles is Intended to bring about a welfare State and the makers of our Constitution who set up such an ideal of welfare Slate would not have intended to allow betting and gambling on horse race openly, publicly in the manner it is being done in our country only for a few shillings in the colter of the Slate and if so these provisions need to be struck down by this court as ultra vires the provisions of our Constitution.

37. Mr. Roy. learned Advocate for the petitioner haa referred to the copy of the licence which is at annexure "C" to the writ petition.

38. He has further submitted that it would appear from the said licence that consideration for the grant of Licence is the Licence Fee mentioned therein.

39. The learned Advocate for the petitioner further submits that it would also

appear that the Licensee has been permitted to hold races upto 60 days a year over and above Inter-State belting on 165 days which means that the Licence authorises betting and gambling on horse race under the RCTC participating on all All India Races upto 225 days in a year of 365 days.

40. The learned Advocate has further submitted that the horse racing take place in Calcutta, Bombay, Bangalore, Madras, Delhi, Pune, Mysore and Hyderabad and the race horse are by and large common for running in the different races in different parts of India. Therefore, it is not . administratively possible for all the race Clubs in India together to hold races in their respective venues on more days than total all India race days of say 225 days a year.

41. He has further submitted that weather would also be against holding such races on all day and then the Festivals/Special days like Candhljl's birthday, Puja days, Pongal days etc, races are not held.

42. The learned Advocate has further contended that it is to be seen from the records of the Government of West Bengal relating to the grant of such Licence as to the reason for laying down those conditions in the Licence, These are not going to ensure to the benefit of the Government or the members of the public and would have no effect of sobering the legal or Immoral or void part of the matter.

43. It has also been submitted on behalf of the petitioners that Club authorities got these terms incorporated in the Licence on their asking directly or indirectly to keep the Club protected against the Book makers in the name of conditions of the Licence. Those conditions would not in any way help the public to lake it more as sports rather than the evil of betting and gambling.

44. It has also been contended on behalf of the petitioners that the petitioners have not been able to know inspite of best efforts if any contribution worthy of its name has been made by the Club to the Charitable Institutions or Funds determined by the Government and same is camouflagé. It has further been submitted that in the event the RCTC alleges such contribution has been made, then they should furnish before this court the detail particulars of the same as also the Balance Sheet of the RCTC for the concerned year to see the Profit and Loss Account of the same and the heads of expenses of the RCTC.

45. It is the contention of the petitioners that the admitted position is that the Government Tax to the extent of Rs. 5 Crores has not yet been paid. As stated in the writ petition the Taxes payable on the amount Invested by a member of the public in betting as and by way of gamble and the Tax is a part of the same investment. It is the contention of the petitioners that the Tax of the Government is realised by the RCTC even before the race starts and therefore, non-payment of Tax to the extent of Rs. 5 Crores and holding back the money and utilisation of the same, amounts to Criminal breach of trust with regard to the said amount of the Government by the authorities of the Club. This fact it has been alleged, has been admitted by senior and responsible members of the Club itself as would

appear from the letter at annexure "D" to the writ petition. The Government is remaining a silent spectator of this for obvious reasons. But the members of the public must voice against the same because the brunt is borne by them.

46. It has been submitted on behalf of the petitioner that it is contended in the affidavit-in-opposition that the Club being an unregistered Association of persons, is not authorised to hold land or properties in its name. Still a reading of the statement in Paragraph No. 26 of the writ petition with those in Paragraph No. 7 of the affidavit-in-opposition. It would appear that this unregistered Club is in possession of and is also utilising the Government properties of the value of more than Rs. 1000 crores. That apart the Club has other properties, as stated in the writ petition and not disputed in the affidavit-in-opposition.

47. It is also the contention of the writ petitioner that stewards who are 8 Club members are in control of the affairs of the Club. It has also been alleged that there are serious Irregularities in the holding and conducting of Annual General Meeting. He has referred to the letter of one Mr. All. L. Sudh, a member of the Club which along with the proceedings of the meetings of the club show that even Mr. B.M. Khaitan, a patron of the Club. Is expressed total dissatisfaction about the way the -affairs of Club are being managed.

48. It has also been alleged on behalf of the petitioner that since the Club is a private Club and Association of persons and only 5/7 persons who are controlling the affairs of the club are dealing with public monies, collected from public on betting and gambling to the tune of crores of rupees and extent of alarming situation with regard to the Club funds is not only that Government dues to the extent of Rs. 5 crores or more are lying unpaid though collected even before the race started.

49. The petitioner has also alleged following irregularities :--

1) The Book makers are withholding Club funds to the extent of Rs. 40 lakhs. If not more as would appear from page 40 of the writ petition.

ii) A financial scandal Involving an ex-steward of the Club Mr. K.K. Dattagupta worth about Rs. 32 lakhs. If not more as has been alleged in the petition. It has been contended that an administrator should be appointed pending final decision of the writ petition.

50. Alternatively, it has been submitted that in the event it is held that acts of betting and gambling of horse racing are not per se, illegal or immoral, in that event the following controlling measures should be taken:--

a) Under Order of this court the Government should sponsor floating of a Public Limited Company to take over the RCTC on horse racing. This is because in case of the Public Limited Company, there would be check and balance in the matter of its dealing under provisions of the Companies Act. In fact, the races in Bombay and Bangalore are run by Public Limited Companies called Royal Western India Turf Club Limited for Bombay and Bangalore Turf Club Limited for

Bangalore. Bombay Turf Club controls Pune and Delhi and Bangalore Turf Club controls Mysore Races. In Tamil Nadu the Government has taken over the horse racing by and under the Madras Race Club (Acquisition and transfer of undertaking) Act 1986, which controls races at Madras and Ooty. Mere floating of a Public Limited Company will not help diminishing the evil nor the petitioners understand the problem in that way.

b) The aim and object of the Company shall have to be to eradicate the betting and gambling and to finally stop the same in a phased way and in a planned manner so that neither the persons involved in the race at present, nor the horses and the properties are knocked off by a stroke of pen but then there should be positive planning to programme in a phased manner ultimate closure of such betting and gambling on horse race.

c) The Company should be floated with shares allotted to the existing members of the Club, members of the race going public, the owners of the horses and also the trainers, Jockeys and employees so that it does not become a Company of two groups to fight against each other.

d) The share holding of the parties shall be balanced in such a way that the ultimate say remains with the members of the public together with the State Government.

e) The entire profit of the gamble shall be spent by funding social, educational and medical projects.

f) The court should Indicate how much of the profit should go to which Account. The petitioners feel that the substantial Income out of betting and gambling a nuisance, should be spent for eradicating an another evil of the modern society by setting up old age homes etc.

It has also been suggested by the petitioner that there shall be a high-power Committee to be appointed by the court right at once to explore and find out the modalities of operation of the horse race, minimising as far possible the evil of betting and gambling.

51. It has been further contended on behalf of the petitioner that the members of the Club as also the persons Involved in racing and some persons as the court may deem appropriate may be taken and nominated as the first group of Directors of the proposed Public Limited Company with the future election of the Directors left open to be dealt with and controlled by the provisions of the Companies Act. So that persons other than the Stewards participate in the functioning of the Company and the object of floating the Company become successful, the Directors shall be given some position and perquisites within the frame work of the Company Act 1956.

52. It has also been submitted on behalf of the petitioner till the aforesaid regulation is made, the court should appoint at least two persons as administrators to oversee the management of the Club.

53. It has also been alleged that the "Club being an unregistered association of persons" is authorised to hold land or properties in its name.

54. It has also been contended that the Race Course in the Calcutta Maldan for the reason on that horse-racing has been leased out to the Club by the President of India. The property belongs to the Government of India and in Paragraph 26 of the writ petition, the value of the property has been estimated on conservative basis at more than Rs. 1000 crores.

55. It has also been alleged that there are other Immovable properties in 11, Russel Street as also the horse stable in Hastings and Bhowanipur in the city of Calcutta.

56. It has also been alleged that the Club keeps in hand wine, cigar, cigarettes worth more than Rs. 1,52,000/-, keeps on arrear of Government taxes of more than 5 crores, keeps outstanding sundry amount at about Rs. 43/44 lakhs.

57. It has also been submitted that although the Club is a private Club and is an unregistered association of persons, the court can interfere since its handling with the Government and public properties to the tune of more than Rs. 1000 crores and involving the public in millions Rupees in the Illegality and immorality namely betting and gambling on horse race.

58. The learned Advocate for the petitioner has submitted that in Tamil Nadu the Horse Racing is controlled by the State Government, under the Madras Race Club (Acquisition and Transfer of Undertaking) Act. 1986. Under the said Act. the undertaking of the Madras Race Club, which was running horse races at Madras and Ooty (Uthagamandalam) have vested in the State Government.

59. The learned Advocate for the petitioner has also submitted that with regard to another type of gambling, namely "lottery", it has been severely deprecated by the public at large. In this connection, he has relied upon several newspaper and has submitted that the same will equally apply in case of gambling.

60. He has also submitted that the newspaper reports though are not conclusive but as persuasive value.

61. Mr. Arijit Chowdhury, learned Advocate for RCTC, on the other hand, has submitted that the instant case does not come within public interest litigation. According to him in order to be a public interest litigation, there must be some action which violates the fundamental or basic rights of "the needy, the underdog and the neglected" or which shocks the conscience of the court. In this connection he has relied upon the Judgment and decision in the case of Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others,

62. Mr. Chowdhury has further submitted that the Royal Calcutta Turf Club that is RCTC is an unincorporated Members' Club and cannot be sued in its own name. In this connection he has relied upon the Judgment and decision in the case of Rajendra Nath Tikku Vs. The Royal Calcutta Turf Club,

63. The further contention of the learned Advocate for the respondent, RCTC, is that the Members of the Racing public who are necessary parties have not been Joined and, as such there is infirmity in the said writ petition.

64. It has further been submitted by Mr. Chowdhury that the said question was considered by the Supreme Court in the case of Gherulal Parakh Vs. Mahadeodas Maiya and Others, wherein the Supreme Court held that betting is not illegal or immoral or contrary to public policy. The learned Advocate has also referred to the Law of Contract by Cheshire Ffoot and Furmston (11th Edition) relied on by the petitioners at page 311 last paragraph in this connection.

65. It has been submitted by Mr. Chowdhury that the Supreme Court has specifically considered betting on horse races at pages 789. 791 and 796 and has held that such betting is not illegal and is in fact the sources of revenue for the State. The question of Immorality has been considered by the Supreme Court at page 797 and it has been held at page 798 that betting contract are not Immoral as Immorality is understood in law.

66. The learned Advocate has further submitted that the Supreme Court has also held that such a contract is not contrary to public policy. The decision of the Supreme Court in the case of The State of Bombay Vs. R.M.D. Chamarbaugwala, has been considered and distinguished at pages 796 and 797 of the Judgment.

67. It has also been submitted by Mr. Chowdhury that it is for the legislature to pass a law prohibiting such contracts if it considers wagering contract as harmful to society. It has also been contended by Mr. Chowdhury that the West Bengal Gambling Competitions Act, 1957 and section 30 of the contract has not been properly construed by petitioners.

68. It has also been submitted that the said statutes do not encourage betting but on the contrary impose controls upon It. According to Mr. Chowdhury the contention of the petitioner with regard to entry 34 in List II of the Seventh Schedule to the Constitution to the effect that the same requires the State to make laws prohibiting betting is also based on a misconstruction of that entry.

69. Mr. Chowdhury has further submitted that the State has the power that entry to regulate and control belting, if it so chooses, and to the extent that it feels necessary. There is nothing in the entry which prevents the Slate from enacting legislation short of prohibition of betting. It is for the Stale, and the State alone, to consider to what extent betting should be controlled. According to him it is not the function of the court to direct legislature to pass particular legislation. He has further submitted that there is nothing in the Constitutfon especially having regard to the observations made by the Supreme Court in the case of Gherulal Parakh Vs. Mahadeodas Maiya and Others, which requires that betting be prohibited.

70. The learned Advocate for RCTC has also submitted that the suggestion of the petitioners will in effect seek to interfere with the affairs and rights of the

members of the club and deprive them of their property without the authority of law, and also amounts to Interference with the right of the members to form an association and the same also violates Articles 13, 19 and 300(A) of the Constitution.

71. It has also been submitted that the petitioner not being members of the club have no locus standi to complain about the Internal management of the Club. It has been submitted that allegations made by the petitioner really amount to interference with the internal management of the Club, which cannot be gone into in this writ petition.

72. It has also been submitted that the extraordinary procedure available to persons acting in the public Interest cannot be availed of by the petitioner who admittedly have no locus standi to make this application. It has also been contended that it appears from the joint affidavit of Vineet Verma and Anjan Gupta affirmed on 12th August, 1993 that the petitioner has been set up to make this application by interested persons particularly Mr. C.J. Singh. Therefore the particular procedure of public Interest litigation cannot be made available to the petitioner in the instant case.

73. I have considered the submissions of the learned Advocates for the parties and the decisions cited by them. It appears on the basis of the prayers made in the writ petition the petitioners seek declaratory relief and pray for a declaration that the public betting and gambling on horse races as is done in the Royal Calcutta Turf Club are Illegal, immoral and opposed to public policy. They also seek relief in the form of writ in the nature of Mandamus commanding the respondents 1-12 and other members of the Club from holding or running of horse races in the Calcutta Race Course or in any other public places or from holding any betting or gambling of such horse races or allowing any such betting and gambling as mentioned in the petition. The question arises whether the writ petition seeking such relief can be entertained by this court. The aforesaid main two prayers are not directed against the State respondents. However, an alternative prayer has been made in the writ petition for a direction upon the respondents Nos. 1 and 2 who are State authorities directing them to submit a scheme for such betting and gambling on horse races providing State control over the same to minimize the evil of such betting and gambling and channelising the Income therefrom to activities beneficial to public.

74. Further question arises if such direction can be Issued by the court upon the State authorities. In the case of *Gherulal Parakh Vs. Mahadeodas Maiya and Others*, in the aforesaid decision the Supreme Court held that a contract of wager even though void may not be Immoral or opposed to public policy and as such forbidden by law.

75. In this connection the observation and finding of the Supreme Court in Paragraphs 8 and 9 of the said Judgment are set out hereunder:

8. "The question shortly stated is whether what is void can be equated with what

is forbidden by law. This argument is not a new one. but has been raised in England as well as in India and has uniformly been rejected. In England the law relating to gaming and wagering contracts is contained in the Gaming Acts of 1845 and 1892. As the decisions turned upon the relevant provisions of the said Acts, it would help to appreciate them better if the relevant sections of the Acts were read at this stage:

Section 18 of the Gaming Act. 1845 :

"Contracts by way of gaming to be void, and wagers or sums deposited with stake holders not to be recoverable at Law Saving for subscriptions for prizes All contracts or agreements, whether by parole or in writing, by way of gaming or wagering, shall be null and void; and no suit shall be brought or maintained in any court of law and equity for recovering any sum of money or valuable thing alleged to be won upon any wager, or which shall have been deposited in the hands of any person to abide the event on which any wager shall have been made: Provided always that this enactment shall not be deemed to apply to any subscription or contribution, or agreement to subscribe or contribute for or towards any plate, prize or sum of money to be awarded to the winner or winners of any lawful game, sport pastime or exercise."

Section I of the Gaming Act. 1892:

"Promises to repay sums paid under contracts void by 8 & 9 Vict. c. 109 to be null and void-any promise, express or implied, to pay any person any sum of money paid by him under or in respect of any contract or agreement rendered null and void by the Gaming Act, 1845 or to pay any sum of money by way of commission, fee, reward, or otherwise in respect of any such contract, or of any services in relation thereto or in connection therewith, shall be null and void, and no action shall be brought or maintained to recover any such sum of money."

While the Act of 1845 declared all kinds of wagers or games null and void, it only prohibited the recovery of money or valuable thing won upon any wager or deposited with stakeholders. On the other hand, the Act of 1892 further declared that moneys paid under or in respect of wagering contracts dealt with by the Act of 1845 are not recoverable and no commission or reward in respect of any wager can be claimed in a court of law by agents employed to bet on behalf of their principals. The law of England till the passing of the Act of 1892 was analogous to that in India and the English law on the subject governing a similar situation would be of considerable help in deciding the present case. Sir William Anson in his book--On Law of Contracts--in respect of any contract or agreement rendered null and void by the Gaming act, 1845, or to pay any sum of money by way of commission, fee, reward, or otherwise in respect of any such contract, or of any services in relation thereto or Inconnection therewith, shall be null and void, and no action shall be brought or maintained to recover any such sum of money."

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".....the law may either actually forbid an agreement to be made, or it may merely say that if it is made the courts will not enforce it. In the former case it is illegal, in the latter only void; but inasmuch as illegal contracts are also void, though void contracts are not necessarily illegal, the distinction is for most purposes not important, and even Judges seem sometimes to treat the two terms as interchangeable. The learned author proceeds to apply the said general principles to wagers and observes, at page 212 thus:

"Wagers being only void no taint of illegality attached to a transaction, whereby one man employed another to make bets for him: the ordinary rules which govern the relation of employer and employed applied in such a case." Pollock and Mulla in their book on Indian Contract define the phrase forbidden by law in section 23 at page 158: "An act or undertaking is equally forbidden by law whether it violates a prohibitory enactment of the Legislature or a principle of unwritten law. But in India, where the criminal law is confined, acts forbidden by law seem practically to consist of acts punishable under the Penal Code and of acts prohibited by special legislation, or by regulations or orders made under authority derived from the Legislature."

9. "Some of the decisions", both English and Indian, cited at the Bar which bring out the distinction between a contract which is forbidden by law and that which is void may now be noticed. In *Thacker v. Hardy* (1878) 4 QB 683, the plaintiff, a broker, who was employed by the defendant to speculate for him upon the stock-exchange, entered into contracts on behalf of the defendant with a third party upon which he (the plaintiff) became personally liable. He sued the defendant for indemnity against the liability incurred by him and for commission as broker. The court held that the plaintiff was entitled to recover notwithstanding the provisions of 8 & 9 Vict. c. 109, section 18 (English Gaming Act, 1845). Lindley J. observed at page 687:

"Now, if gaming and wagering were illegal I should be of opinion that the illegality of the transactions in which the plaintiff and the defendant were engaged would have tainted, as between themselves, whatever the plaintiff had done in furtherance of their illegal designs, and would have precluded him from claiming, in a court of law, any indemnity from the defendant in respect of the liabilities he had incurred: *Common v. Bryer* (1819) 3 B. & Aid. 179; *McKinnel v.*

Robinson (1838) 1 M&W 434; Lyine v. Siesfeld(1856) 1 H & N 278; But it has been held that although gaming and wagering contracts cannot be enforced, they are not illegal; Fitch v. Jones (1855) 5 E & B 238 is plain to that effect. Money paid in discharge of a bet is a good consideration for a btatl of exchange Ouids v. Harison. (1854) 10 Ex 572: and if money be so paid by a plaintiff at the request of a defendant, it can be recovered by action against him; Knight v. Comber (1855) 15CB 562 Jessopp v. Lutwyche (1854) 10 Ex 614; Rosewarnev. Billing (1863) 15 CB 316; and it has been held that a request to pay may be inferred from an authority to bet: Oldham v. Ramsden (1875) 44 LJ 309. Having regard to these decisions, I cannot hold that the statute above referred to precludes the plaintiff from maintaining this action."

In Read v. Anderson(1882) 10 QBD 100; where an agent was employed to make a bet in his own name of behalf of his principal, a similar question arose for consideration. Hawkins J. states the legal position at pages 104:

"At common law wagers were not illegal and before the passing of 8 & 9Vlct. c. 109 actions were constantly brought and maintained to recover money won upon them. The objectofS &9Vict. c. 109 (passed in 1845) was not to render illegal wagers which up to that time had been lawful, but simply to make the law no longer available for their enforcement, leaving the parties to them to pay them or not as their sense of honour might dlcataate."

After citing the provisions of section 18 of that Act, the learned Judge proceeds to observe thus, at page 105:

There is nothing in this language to affect the legality of wagering contracts they are simply rendered null and void and not enforceable by any process of law. A host of authorities have settled this to be the true effect of the Statute." This Judgment of Hawklns J. was confirmed on appeal (reported in Read v. Anderson (1984) 13 QB 779) on the ground that the agency became Irrevocable on the making of the bet. The judgment of the court of appeal cannot be considered to be a direct decision on the point. The said principle was affirmed by the court of appeal again in Bridger v. Savage. (1885) 15 QBD 363. There the plaintiff sued his agent for the amount received by him in respect of the winnings from the persons with whom the agent had betted. Brett, M.R., observed at p. 366:

"..... the defendant has received money which he contracted with the plaintiff to hand over to him when he had received It. That is a perefectly legal contract but for the defendant it has been contended that the statute 8 & 9 vict. c. 109 section 18, makes that contract illegal. The answer is that it has been held by the courts on serveral occasions that the state applies only to the original contract made between the persons betting, and not to such a contract as was made here between the plaintiff and defendant." Bowen L. J. says much to the same effect at page 367:

"Now with respect to the principle involved in this case, it is to be observed that the original contract of betting is not an illegal one, but only one which is void. If

the person who has betted pays his bet, he does nothing wrong: he only waives a benefit which the statute has given to him, and confers a good title to the money on the person to whom he pays it. Therefore when the bet is paid the transaction is completed, and when it is paid to an agent it cannot be contended that it is not a good payment for his principal So much, therefore for the principle governing this case. As to the authorities, the cases of *Sharp v. Taylor* (1849) 2 Phil. 801; *Jhonsan v. tanslcy* (1852) 12 CB 468, and *Beeston v. Beeston* (1875) 1 Ex. D. 13, all go to shew that this action is maintainable and the only authority the order way is that of *Beyer v. Adams* (1857) 26 L.J. Ch. 841. and that case cannot be supported and is not law."

This case lays down the correct principles and is supported by earlier authorities. The decision in *Patridge v. Mallandaine* (1886) 180BD 276, is to the effect that persons receiving profits from betting systematically carried on by them are Chargeable with Income tax on such profits in respect of a vocation under 5 & 6 Vict. c. 35 (the Income Tax Act) Schedule D. Hawkins J. rejecting the argument that the profession of bookmakers is not a calling within the meaning of the Income Tax Act, makes the following observations, at page 278:

"More betting is not Illegal. It is perfectly lawful for a man to bet if he likes. He may, however, have a difficulty in getting the amount of the bets from dishonest persons who make bets and will not pay."

The decision in *Hyams v. Stuart King*, (1908) 2 KB 696 deals with the problem of the legality of a fresh agreement between parties to a wager , for consideration. There, two bookmakers had betting transactions together, which resulted in the defendant giving the plaintiff a cheque for the amount of bets lost to him. At the request of the defendant, the cheque was held over by the plaintiff for a time, and part of the amount of the cheque was paid by the deft. Subsequently a fresh verbal agreement was come to between the parties, by which. In consideration of the plaintiff holding over the cheque for a further time and refraining from declaring the defendant a defaulter and thereby Injuring him with his customers the defendant promised to pay the balance owing in a few days. The balance was never paid and the plaintiff filed a suit to recover the money on the basis of the fresh verbal agreement. The court of appeal, by a majority, Fletcher Moulton L. J. dissenting, held that the fresh verbal agreement was supported by good consideration & therefore the plaintiff was entitled to recover the amount due to him. At page 705, Sir Gorell Barnes posed the following three questions to be decided in the case (1) Whether the new contract was itself one which falls within the provisions of 8 & 9 Vlct. c. 109 section 18 (2) whether there was any Illegality affecting that contract; and (3) whether that contract was lawful contract founded on good consideration. Adverting to the second question, which is relevant to the present case, the President made the following observations at page 707:

"..... it is to be observed that there was nothing illegal in the strict sense in making the bets. They were merely void under 8 & 9 Vict c. 109, and there

would have been no illegality in paying them. There is no doubt whatever about this. There was also nothing illegal in giving the cheque nor would there have been any illegality in paying it, though the defendants could not have been compelled by the plaintiff to pay it, because by statute it was to be deemed and taken to have been made and given for an illegal consideration, and therefore void in the hands of the plaintiff The statutes do not make the giving or paying of the cheque illegal, and not penalty for so doing. Their effect and intention appear only, so far as material, to be that gaming or wagering contracts cannot be enforced in a court of Law or Equity."

The view expressed by the President is therefore consistent with the view all along accepted by the courts in England. This case raised a new problem, namely, whether a substituted agreement for consideration between the same parties to the wager could be enforced and the majority held that it could be enforced while Fletcher Moulton L.J. recorded his dissent. We shall have occasion to notice the dissenting view of Fletcher L.J. at a later stage. The aforesaid decisions establish the proposition that in England a clear distinction is maintained between a contract which is void and that which is illegal and it has been held that though a wagering contract is void and unenforceable between parties, it is not illegal and therefore it does not affect the validity of a collateral contract"

76. The case of Rajendra Nath Tikku Vs. The Royal Calcutta Turf Club, may be taken note of. In the instant case however, the State Government is also a party and the prayer is also for a direction upon the State Government. Be that as it may, the question arises if such direction can be against the State Government by the court in a writ proceeding.

77. In my view it is for the legislature to decide whether such law should be made or not. The court cannot on its own direct any legislation to be passed imposing ban on horse race or guiding or imposing certain restrictions or guidelines thereto. It is open for the Appropriate Authority to take such decisions and to pass such legislation as they may think fit and proper.

78. Mr. Chowdhury, learned Advocate for RCTC has also relied upon the several decisions. The case of Gherulal Parakh Vs. Mahadeodas Maiya and Others, , it was held by the Supreme Court that though a wager is void and unenforceable. It is not forbidden by law and therefore the object of the collateral agreement is not unlawful u/s 23 of the Contract. It was also held in the aforesaid decision that "the common law of England and that of India have never struck down contracts of wager on ground of public policy: Indeed they have always been held to be not illegal notwithstanding the fact that the statute declared them void. The moral prohibitions in Hindu Law texts against gambling were not only not legally enforced but were allowed to fall into desuetude. In practice, though gambling is controlled in specific matters. It has not been declared illegal and there is no law declaring wagering illegal. There is no definite head or principle of public policy evolved by courts or laid down by precedents which would directly

apply to wagering contracts. Even if it is permissible for courts to evolve a new head of public policy under extraordinary circumstances giving rise to incontestable harm to the society wager is not one of such Instances of exceptional gravity, for it has been recognised for centuries and has been tolerated by the public and the State alike.

79. After the hearing was concluded judgment was delivered in the case of Dr. K.R. Lakshmanan v. State of Tamil Nadu and Another reported in Judgment Today 1996 (1) SC 173 on 12th January, 1996. In the aforesaid decision the Supreme Court took into consideration whether the running of horse races by the club is a game of "chance" or a game of "mere skill". The Supreme Court held that horse racing is a game where the winning depends on substantially and preponderantly on skill and it is a game of chance and as such is not gambling.

80. The Supreme Court in this connection considered sections 4, 11 and 49A of the Madras City Police Act, 1888. The question arose before the Supreme Court whether "wagering" or "betting" on horse racing is "gaming" as defined by the Police Act and the Gaming Act. The Supreme Court held that it was not "gaming" even if there is "wagering" or "betting" with the club it is on a game of mere skill and as such it would not be "gaming" under the two Acts i.e. Madras Gaming Act, 1930 and Madras City Police Act. 1888. In the aforesaid decision the Madras Race Club (Acquisition and Transfer of Undertaking) Act, 1986 was challenged. Questions that came up before the Supreme Court are as follows :

1. What is gambling?
2. That is the meaning of expression "mere skill in terms of section 49A of the Madras City Police Act, 1888 (The Police Act) and section 11 of the Madras Gaming Act, 1930 (the Gaming Act)?
3. Whether the running of horse races by the club is a game of "chance" or a game of "mere skill"?
4. Whether "wagering" or "betting" on horse races is "gaming" as defined by the Police Act and the Gaming Act?
5. Whether the horse racing even if it is a game of "mere skill" is skill prohibited u/s 49A of the Police Act and section 4 of the Gaming Act?
6. Whether the Madras Race Club (Acquisition and Transfer of Undertaking) Act, 1986 (the 1986 Act) gives effect to the policy under Article 39(b) and (c) of the Constitution of India (The Constitution) as such is protected under Article 31(c) of the Constitution. If not, whether the 1986 Act is liable to be struck down as violative of Articles 14 and 19(1)(g) of the Constitution.

81. Relevant portions of the said judgment as appearing in paragraphs 3, 17, 20, 21, 22, 27 and 28 of the said report are set out hereinafter below:

"3"--"The New Encyclopedia Britannica defines gambling as The betting of staking of something of value, with consciousness of risk and hope of gain on the

outcome of a game, a contest, or an uncertain event the result of which may be determined by chance or accident or have an unexpected result by reason of the better's miscalculations". According to Black's Law Dictionary (sixth edition) "Gambling involves, not only chance, but a hope of gaining something beyond the amount played. Gambling consists of consideration, an element of chance and a reward". Gambling in a nut-shell is a payment of a price for a chance to win a prize. Games may be of chance or of skill or of the skill and chance combined. A game of chance is determined entirely or in part by lot or mere luck. The throw of the dice, the turning of the wheel the shuffling of the cards, are all made of chance. In these games the result is wholly uncertain and doubtful. No human mind knows or can know what it will be until the dice is thrown, the wheel stops its revolution or the dealer has dealt with the cards. A game of skill, on the other hand, although the element of chance necessarily cannot be entirely eliminated is one in which success depends principally upon the superior knowledge, training, attention, experience and adroitness of the player, Golf, Chess and even Rummy are considered to be games of skill. The courts have reasoned that there are few games, if any which consist purely of chance or skill, and as such a game of chance is one in which the element of chance predominates over the element of skill and a game of skill is one in which the element of skill predominates over the element of chance. It is the dominant element "skill" or "chance" which determines the character of the game."

"17"--"We may now take-up the second question for consideration. Section 49 of the Police Act and section 11 of the Gambling Act specifically provide that the penal provisions of the two Acts shall not apply to the games of "mere skill wherever played." The expression "game of mere skill" has been Interpreted by this court to mean "mainly and preponderantly a game of skill" in State of Andhra Pradesh Vs. K. Satyanarayana and Others, the question before this court was whether the game of Rummy was a game of mere skill or a game of chance. The said question was to be answered on the Interpretation of section 14 of the Hyderabad Gambling Act (2 of 1305 F) which was parlmatéria of section 49 of the Police Act and section 11 of the Gaming Act. This court referred to the proceedings before the courts below in the following words :

"The learned Magistrate who tried the case was of the opinion that the offence was proved, because of the presumption since it was not successfully repelled on behalf of the present respondents. In the order making the reference the learned Sessions Judge made two points : He first referred to section 14 of the Act which provides that nothing done under the Act shall apply to any game of mere skill wherever played and he was of opinion on the authority of two cases decided by the Madras High Court and one of the Andhra High Court that the game of Rummy was a game of skill and therefore the Act did not apply to the case."

This court held the game of Rummy to be a game of mere skill on the following reasoning :

"We are also not satisfied that the protection of section 14 is not available in this

case. This game of Rummy is not a game entirely of chance like the "three-card" game mentioned in the Madras case to which we were referred. The "three-card" game which goes under different names such as "flush", "brag" etc. Is a game of pure chance. Rummy, on the other hand, requires certain amount of skill because the fall of the cards has to be memorised and the buildings up of Rummy requires considerable skill in holding and discarding cards. We cannot, therefore, say that the game of Rummy is a game of entire chance. It is mainly and preponderantly a game of skill. The chance in Rummy is of the same character as the chance in a deal at a game of bridge. In fact in all games in which cards are shuffled and dealt out, there is an element of chance because the distribution of the cards is not according to any set pattern but is dependent upon how the cards find their place in the shuffled pack. From this alone it cannot be said that Rummy is a game of chance and there is no skill involved in it."

"20"--"Betting on horse racing "or athletic contests involves the assessment of a contestant's physical capacity and the use of other evaluative skills."

"21"--"Volume 6 of the Encyclopedia at page 68 onwards deals with the subject of horse racing. Thoroughbred horses with pedigree are selected and trained for races. Horse racing is a systematic sport where a participant is supposed to have full knowledge about the horse, Jockey, trainer, owner, turf and the composition of the race. It would be useful to quote an extract from the Encyclopaedia : Horse racing, sport of running horses at speed, mainly, thoroughbreds with a rider astride or standardbreds with the horse pulling a conveyance with a driver. These two kinds of racing are called racing on the flat and harness racing. Some races on the flat involve jumping Knowledge of the first horse race is probably lost in prehistory. Both four-hitch chariot and mounted (bareback) races were held in the Olympic Games of 700-40 BC. Other history of organized racing is not very firmly established. Presumably, organized racing began in such countries as China, Persia, Arabia, and other countries of the Middle East and of North Africa, where horsemanship early became highly developed. Thence came too the Arabian, Barb, and Turk horses that contributed to the earliest Europeans racing. Such horses became familiar to Europeans during the Crusades (11th to 13th centuries) from which brought those horses back..... Eligibility rules were developed based on the age, sex, birth place and previous performance of horses and the qualifications of riders. Races were created in which owners were the riders (gentlemen riders), in which the field was restricted geographically to a township or country and in which only horses that had not won more than a certain amount were entered..... All horse race on the flat except quarter horse racing involves Thoroughbred horses. Thoroughbred evolved from a mixture of a Arab, Turk and Barb horses with native English Stock. Private studbooks existed from the early 17th century, but they were not invariably reliable. In 1791 weatherby published an Introduction to a General Stud Book, the pedigrees being based on earlier Racing Calendars and sales papers. After a few years of revision, it was updated annually. All Thoroughbreds are said to descend from three "Oriental" stallions (the Darley Arabian, the Godolphin Barb, and the

Byerly Turk, all brought to Great Britain, 1690-1730) and from 43 "royal" mares (those Imported by Charles 11). The predominance of English racing and hence of the General Stud Book from 179 provided a standard..... A race horse achieves peak ability at age five, but the classic age of three years and the escalating size of purses, breeding fees, and sale prices made for fewer races with horses beyond the age of four..... Over the centuries the guiding principle for breeding throughbreds has been, as expressed by an old cliché, breed the best to the best and hope for the best. Performance of progeny is the most reliable guide to what is best for breeding purposes, of course but in the case of horses untried at stud, their own racing ability, pedigree and physical conformation are the only available yardsticks. Emphasis is on racing ability, especially in evaluating potential stallions."

"22"--"Horse racing is an organized Institution, apart from a sport. It has become a huge public entertainment business. According to the New Encyclopaedia Britannica the occasion of certain races are recorded as public holidays. Derby day at Epsom where the public is admitted on two parts of the rounds at no fee has drawn as many as 5,00,000 spectators. Attendance at horse races in many countries is the highest or among the highest of all sports. The horses which participate in the races are a class by themselves. They have a history of their own. The breed of the horse is an important factor. The experts select the horses who are to be inducted into the racing profession. The selected horses are given extensive Training by professional trainers. Breed, upbringing, training and the past record of the race, horses are prominently published and circulated for the benefit of prospective bettors. Jockeys are experts in horse riding and are expensively trained in various aspects of horses racing. They are supposed to know the horse they are riding and the turf on which the horse is to run."

"27"--"We have hesitation in reaching the conclusion that the horse racing is a sport which primarily depends on the special ability acquired by training. It is the speed and stamina of the horse, acquired by training, which matters. Jockey's are experts in the art of riding. Between two equally fast horses, a better trained jockey can touch the winning post."

"28"--"In view of the discussion and the authorities referred to by us, we held that the horse racing is a game where the winning depends substantially and preponderantly on skill."

Considering the facts and circumstances of the case, in my view, no Interference is called for in this writ petition and accordingly the writ petition fails and is dismissed.

There will be no order as to costs.

82. Petition dismissed