
(1979) 02 AP CK 0014

In the Andhra Pradesh High Court

Case No : Writ Petition No"s. 5768 and 5860 etc. of 1978 and 5 and 49, etc. of 1979

Janata Recreation Centre, Gullapalli

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 15-02-1979

Acts Referred:

Andhra Pradesh Gaming Act, 1974 — Section 10, 10(2), 11, 2, 2(2)
Constitution of India, 1950 — Article 14(1), 19(1), 21, 226

Citation : AIR 1979 AP 265 : (1979) 1 APLJ 377

Hon'ble Judges : Seetharama Reddy, J;Kondaiah, J

Bench : Division Bench

Advocate : S. Ramachandra Rao, J. Eswaraprasad, E. Manohar, P.L. Narasimha Sarma, V. Narasimhareddy and V. Lakshmi Devi, for the Appellant; Govt. Pleader for G.A.D, for the Respondent

Judgement

Kondalah, J.—This batch of writ petitions challenges the constitutional validity of the provisions of Ss. 2,3, 4, 5, 4 8 and 11 of the Andhra Pradesh Gaming Act, 1914 (hereinafter called the Act), on the ground that they violate the provisions of Arts. 14, 19 and 21 of the constitution of India,

2. The facts in all these writ petitions are similar. However, for the sake of convenience we will refer to the facts in W. P. 5768/78.

3. The petitioner Janata Recreation Centre is a registered society. whose activities according to the memorandum of Articles of the Association. are basically and essentially cultural activities. Its object is to promote cultural and social welfare of its members by providing amenities for cultural, social and recreational activities to its members and also to promote hue arts and diffusion of useful knowledge and also encourage and participate in dramas, literary competitions, dance and other games. Their members are respectable persons of the locality and sometimes play cards but they do not indulge in gaming and the club is not a gambling house. It is alleged that the local police are often raiding

the club premises and harassing the members of the club and creating lot of inconvenience and also interfering with their personal liberty and privacy by arbitrary exercise of the police powers capriciously and mala fide. The petitioner, therefore, seek; to declare the provisions of the sections of the Act mentioned above as unconstitutional, invalid and illegal. The petitioner also seeks an injunction restraining the respondents and their subordinates from interfering in any manner whatsoever with the activities of the club.

4. A counter has been filed on half of the respondents contending inter alia that all the provisions of the Act are intra vires, valid and not violative of Arts. 14, 19 and 21 of the Constitution, that the police authorities are empowered to maintain law and order and discharge their duties in accordance with law and no harassment or inconvenience has been caused to the members of the club and that the Gaming Act has been ended to put down the evil of gambling which is rampant in the State and there if no merit in the writ petition.

5. Before examining the constitutional validity or otherwise of the several provisions of the Act on which the attack is being made by the petitioner, we may profitably refer to the scheme of the Act. The Act has been enacted by the Andhra Pradesh Legislature to consolidate and amend the law relating to the punishment of gaming and the keeping of common gaming houses in the State. Prior to the Act coming into force on 23rd Aug., 1974 when it was published in the Gazette of Andhra Pradesh after receiving the assent of the Governor on 22-8-1974, the Andhra Pradesh (Andhra Area) Gaming Act of 1930 and the Andhra Pradesh (Telangana Area) Gambling Act of 1305 F were in force in the Andhra area and the Telangana area respectively. By Section 17 of the Act the aforesaid two acts have been repealed although the previous operation of the repealed Act was saved and anything done or any action taken in exercise of any powers conferred by or under the said repealed Acts shall be deemed to have been done or taken in exercise of the powers conferred by or under the present Act as if this Act was in force on the respective dates. Hence, the present Act has been enacted to have one common Act for the entire Andhra Pradesh

6. S. 1 indicates the short title and commencement of the Act. S. 2 provides for determinations. S. 2 (1) defines "common gaming house". S. 2 (2) defines "gaming" and playing a game for winning or prizes in money or otherwise and includes playing a game of mutka or satta and lucky board and wagering or betting, except where such wagering or betting takes place upon horse races, as specified therein. S 2 (4) defines "instruments of gaming" which is an inclusive definition. It includes cards, dice gaming tables, or clothes. boards, or any other article used or intended to be used as a subject or means of gaming, any document used or intended to be used as a register or record or evidence of any gaming the proceeds of any gaming and any winnings or prizes in money or otherwise, distributed or intended to be distributed in respect of any gaming.

7. S. 3 provides for penalty for opening a common gaming house, whereas S. 4 indicates the punishment for being found gaming in a common gaming house.

The Explanation to S. 4 draws a presumption that any person found in any common gaming house during gaming therein shall be deemed to have been present there for the purpose of gaming.

8. S. 5 empowers any salaried judicial or executive magistrate or any police officer not below the rank of an Asst. Commissioner of Police or the Dy. Superintendent of Police to authorise by warrant any police officer not below the rank of Sub-Inspector to enter a common gaming house, arrest all persons found therein, to search all such persons and all parts of such place; and seize all moneys found with such persons, instruments of gaming and all moneys and securities found in that place.

9. S. 6 makes the instruments of gaming found in a place entered or searched under S.5 to be evidenced that the place is a common gaming house.

10. Under S. 7, the Explanation to S. 4 or clause (2) of sub-sec. (1) of Section 5 or S. 6 is not applicable to persons found in a premises or place belonging to or occupied by a club, society or other association of persons, whether incorporated or not, unless such persons are actually found gaming in such premises or place.

11. Under S. 8 instruments of gaming etc., found in a common gaming house may be ordered to be destroyed or forfeited on conviction.

12. S. 9 (1) provides for punishment of imprisonment for a term which may extend to three months or fine which may extend to three hundred rupees or both, to persons found gaming or reasonably suspected to be gaming in a public street or thoroughfare or in any place to which the public have, or are permitted to have, access. S. 9 (2) provides for imprisonment of one month or fine of Rs. 50 or both, if anyone is found setting any birds or animals to fight or is reasonably suspected to be aiding or abetting such fighting of birds or animals in a public street or thoroughfare or in any place to which the public have, or are permitted to have, access.

13. S. 10 empowers a police officer to arrest without warrant for gaming or setting birds or animals to fight public street or place and to seize moneys, instruments or gaming birds and animals.

14. S. 11 indicates presumption of proof of gaming in respect of anything seized under sub-sec. (2) of S. 10 in case the Magistrate is satisfied that the police officer who seized it has reasonable ground for suspecting that the thing so seized was an instrument of gaming.

15. S. 12 provides for destroying or forfeiting the instruments of gaming etc. found in the public street or place.

16. Under S. 13 identification of person concerned who is examined as witness is provided for.

17. Under S. 14 payment of portions of fine to informants is made permissible.

18. S. 15 makes it clear that the provisions of the Ad shall not apply to games of skill only wherever played.

19. S. 16 empowers the State Government by notification in the A. P. Gazette to make rules for carrying out all or any of the provisions of the Act whereas under S. 17 the earlier Andhra Pradesh Gaming Act, 1930 and Andhra Pradesh Gambling Act, 1305 F. are repealed

20. This in short is the scheme of the Act. The scheme of the Act indicates that the prime intendment and object of the Act as disclosed from the several provisions of the Act is to eradicate the evil of gaming and also to see that no common gaming house is kept by anyone. The definition of "gaming" under S. 2 (2) is of wide import so as to take in any game played for winnings or prizes in money or otherwise and includes playing a game of mutka or satta and lucky boards. Mutka or satta has become a menace to society in several areas of Andhra Pradesh and makes many innocent middle class and lower middle class and poor citizens lose their entire property and the prevalence of this evil has made the Legislature make this definition of gaming in very wide terms. The definition of "common gaming house" also is similarly of a wide import. It takes in all types of gaming except wagering or betting on horse races on the days when the horse race takes place and that within the-enclosures and with a licensed book-maker. Several categories of gaming as indicated in cls. (a), (e) and (f) of sub-sec. (1) of Sec, 2 are brought within the definition of "common gaming house" even though Some of the places are not actual houses.

21. s. 2 (2) which is attacked by the petitioners as unconstitutional and as violative of Art. 14 may be consider ed. S. 2 (1) (ii) deals with any form of gaming other than those specified in cls. (a), (b), (c), (d), (e) and (f) of subsec. (1) of S. 2. In respect of such classes of gaming any house, room, tent, enclosure, vehicle, vessel or any place whatsoever in which any instruments of gaming are kept or used for profit or gain would come within the definition of "common gaming house". Any place where any instruments of gaming are kept or used for profit or gain would come within the definition of "common gaming house". Any place where any instrument of gaming is kept or used for profit or gain of the person owning, occupying or using such house is a "common gaming house". Explanation to S. 2 (1) (ii) makes it clear that even though there is no profit or gain for the club, society or association of persons, if its premises are used or kept for the purpose of gaming it shall be deemed to be a "common gaming house". The submission of Sri P. L. N. Sharma is that there is clear discrimination between a club, society or association of persons and any other house, room or tent indicated in Section 2 (1) (ii). We do not find any discrimination between one club and another club or between one society or another society The distinction is only between a club or society or association of persons and other house or room or tent where any instruments of gaming are and other house or mom or tent where any instruments of gaming are kept or used for the profit or gain of the person owning and is distinguishable on

reasonable classification. The intendment of the Act is to bring in such of the houses, rooms, tents or places within the definition of "common gaming house" when they are used for keeping or using instruments or gaming for profit or gain to the person owning or keeping the premises. In the case of clubs, when once any persons are found to be doing the act of gaming, the club would come within the definition of "common gaming house" although there may not be any profit or gain for the club. We, therefore, find that Art. 14 of the Constitution is not attracted as the classification is made on intelligible differentia.

22. We do not find any illegality or unconstitutionality in the provisions of Ss. 3 and 4 which provide for punishment of such of the persons who are found to be guilty of the offence of opening or maintaining common gaming houses and those found gaming in a common gaming house. Punishment has to be provided with a view to see that the evil of gaming is put down or eradicated. The Explanation to S. 2 is sought to be attacked attributable presumption is created in favour of the prosecution in respect of persons who are present in common gaming house. True, this Explanation would presume that all those persons who are found in a common gaming house are present for the purpose of gaming. The presumption is only rebuttable. It can be disproved by positive evidence by the person who is alleged to have committed this offence. Further, this presumption would not apply to persons found in a premises or place belonging to or kept by club, society or other association of persons, unless such persons are found gaming in such places or premises. This is provided for under S. 7. The complaint of Mr. S. Ramachandrarao that any person found in a club with a pack of cards is liable to be punished under the provisions of this Act cannot be acceded to. The prosecution must positively prove that a person found in a club has engaged himself in the offence of gaming within the definition of S. 2 (2) in order to make him liable for punishment under S. 4.

23. We shall now deal with S. 5 whose constitutionality is very much attacked. This section provides power to a salaried judicial or executive magistrate or any police officer not below the rank of Assistant Commissioner of Police within the area under the jurisdiction of the Commissioner of Police of Hyderabad, and a Deputy Superintendent of Police elsewhere to issue a warrant to any police officer not below the rank of Sub-Inspector to enter a common gaming house or arrest persons therein, to search them and seize the instruments of gaming and all other articles found therein. The submission of Sri Ramachandra Rao is that the power to enter, arrest, seize etc. is entrusted to a police officer on his having reason to believe that any place is used as a common gaming house. The expression "has reason to believe", is not in any way arbitrary under which where the concerned authority has reason to believe on the material available to him that any place is used as a common gaming house. He could issue the warrant to any police officer not below the rank of Sub-Inspector. The very fact that the authorities indicated therein are very responsible officers and the person to whom the warrant is issued being a police officer not below the rank of a Sub-Inspector shows that the Legislature thought that the interests of the citizens

would be safe in the hands of such responsible officers who are expected to discharge the duties properly, fairly and justly. Such power is not only hot arbitrary but is really necessary to implement the provisions of the Act strictly and effectively. But for this power, the police officer would not be able to enter the premises of a club or any common gaming house and take proper and necessary action to prevent this evil charge the persons who are responsible for the offence committed under Art. The subjective satisfaction of the concerned authority under this Ad to whom the power is given to issue a warrant need not be suspected to be abused. Even if any individual officer or authority has exceeded his limits of power or jurisdiction vested in him under the Act, he may be proceeded against by the aggrieved party or persons by not complaining against him to his higher authorities. but by filing criminal complaints, resorting to the aid of common law. In this context we may also add that the petitioners" contention that the police officers should not be allowed to enter their premises of the clubs as they are becoming a menace to them and they are creating harassment and trouble and infringing their fundamental rights of privacy, cannot be acceded to. The police officers are entrusted with the onerous duty to maintain law and order. The Court also cannot issue an injunction or direction to the police officers not to discharge their duties in this regard. That apart, the police officers or other authorities would be prevented from discharging their duties in the interest of public if any prevention is ordered by judicial interference. is do not, therefore, find any illegality in Section 5.

24. Under S. 6, the instrument at gaming found in a place entered or searched under S. 5, will be evidence and it shall be presumed that the place is a common gaming house. The presumption is only reputable but not absolute. It depends upon the particular circumstances of the case.

25. S. 7 is not the subject of attack. In fact, this provision is favorable to the petitioners. It would take away the rigors of some of the presumptions indicated above. The validity of S, 8 is also not in dispute.

26. We shall now deal with S. 9 Mr, Ramachandra Rao presses upon us that even on a mere suspicion that a person is gaming, he is liable to be punished. This provision is arbitrary and unconstitutional. S. 9 would apply only to a case of gaming in any public street or thoroughfare or any place to which the public have or are permitted to have access. The gaming in a public street or place or thoroughfare is a more serious offence, Not only a person who is found gaming in a public place, street or thoroughfare but a person who is reasonably suspected to be gaming in any such public place is liable to be punished with imprisonment for a term which may erected to three months or with fine which may extend up to Rs. 300 or with both. The rigour is in respect of the offence of gaming being committed in a public street. place or thoroughfare which is not in public interest and which is sought to be avoided by the Legislature, at any cost. Hence, the reasonable suspicion of any police officer it self is not sufficient as, ultimately, it has to be proved in a court of law This provision is really essential

to put down the evil of gaming like mutka or satta. The Legislature must be deemed to have made this provision with a view to eradicate this evil of gaming. S. 11 which is said to be unconstitutional. in our view, is valid. The petitioners have not attacked the validity of S 10, which empowers a police officer to arrest and search without any warrant any person referred to in S. 9. Ss. 9, 10 and 11 go together. Whereas Sec, 9 provides for punishment, S. 10 envisages the exercise of the power conferred upon a police officer. S.11 requires the satisfaction of the magistrate that the police officer who seized it has reasonable ground for suspecting that the thing so seized was an instrument of gaming, S 11 must be read with the provisions of S. 10 (2). The police officer is empowered under S. 10 (2) to seize all moneys and instruments of gaming and all things reasonably suspected to be instruments of gaming found in a public place, thoroughfare or street. The presumption indicated in S. 11 is also reputable but not absolute.

27, We are unable to agree with the petitioners that the provisions of the Act provide for a periodical police approach and they amount to unreasonable restrictions of the citizens' right to form associations or unions envisaged under Art. 19(1)(c) of the Constitution, nor do we agree with their plea that the entire Act violates the right of liberty of a citizen guaranteed under Art, 21. Nor is it oppressive. This is not a bill of pains and pleasure as sought to be argued by the writ petitions. Nor is it an example of all the elements of criminal law relating to proof or mens rea being totally dispensed with. This view of ours gains support from a decision of the Supreme Court in Kishan Chander Vs. State of Madhya Pradesh, wherein the provisions of Sections 6 and B of the United States of Gwalior, Indore and Malwa (Madhya Bharat) Gambling Act are held to be not constitutionally bad as offending either Art, 19 or 21 of the constitution. Therein the definitions of " gaming" and "common gaming house" are of wide import as in the instant case. It was held that gambling is an evil and the interests of public order, morality or the general public require that it be eradicated and with regard to the word suspecting in S. 6, speaking for the Court, Hidayatullah J, (as he then was) observed at page 311:--

"It is dear that the power is given to superior officers who are expected to act reasonably and after due satisfaction. But the matter does not end there. After the arrests and seizures have been made the officer who entered the place and seized the articles has to satisfy the Court that his suspicions were based on reasonable grounds and it is only then that the burden is shifted to the accused to prove his innocence. Though the word used in S. 6 is "suspecting" in actual proof this suspicion must be demonstrated to be reasonably based. The safeguards, thus, are (a) the existence of credible information, (b) the seizure of articles suspected to be instruments of gaming which bear out the information on which action is taken, and (c) proof to the satisfaction of the Court that there are reasonable grounds for holding that the articles seized are instruments of gaming. Once the house is shown to the satisfaction of the Court to be a gaming house the law leaves anyone found in it during any gaming, to explain his

presence on pain of being presumed to be there for gaming.

Considering the fact that gaming is an evil and it is rampant, that gaming houses flourish as profitable business and that detection of gambling is extremely difficult, the law to root out gambling cannot but be in the public interest. Such a law must of necessary provide for special procedure but long as it is not arbitrary and contains adequate safeguards it cannot be successfully assailed"

The submission based on Art. 21 was rejected on the ground that "if the impugned provisions are found to be constitutional the curtailment of liberty would not be expect according to the procedure established by law."

28. Admittedly the State Legislature of Andhra Pradesh has legislative competence to enact the present Act. This is not questioned by the petitioners.

We may now refer to a Division Bench decision of this Court in *The Tenali National Club Vs. The Government of Andhra Pradesh and Others*, wherein the Division Bench held that Sections 5 and 13 of the A. P. (Andhra Area) Gaming Act, 1930 are not hit by Art. 14 of the Constitution and they are constitutionally valid. The learned Judge Samba sivarao, A.C.J. (as he then was) served at page 299:-- "S. 5 thus regulates the power of Search which necessarily interferes with the personal life of an individual or the affairs of an institution. This power is particularly conferred on the police, because in the system of Administration they are entrusted with the responsible task of maintenance of law and order. Certainly, gaming, to the extent it is forbidden by the Act, becomes a problem of law and order and consequently it is one of the basic functions of the police to see that the law is not broken, by placing the power of issuing a warrant in Magistrate. Section 5 takes equal care to see that the life of an individual is not easily interfered with. The Magistrate, who is authorised to issue a warrant, should not be an honorary one. He is required to be a salaried Magistrate. Further, he should not be inferior to a Magistrate of the Second Class. So, only a Magistrate of certain status is conferred with this power of Issuing warrants. Even he cannot straightway issue a warrant, he also must have reason to believe that place is being used as a common gaming house. These circumstances clearly establish that instead of S. 5 being unreasonable, it is very much reasonable." That apart, the writ petitions are liable to be dismissed on the ground that they are not filed by citizens of India but by societies which are not citizens,

29. For all the reasons stated above, the writ petitions merit dismissal and they are hereby dismissed, but without costs. Advocate's fee Rs. 150 in W. P. Nos. 5768/78, 5860/78, 6134/78, 6135/78 and 25/79.

30. Before parting with the case. however , we would like to make a few observations. The very object of the petitioners in filing these writ petitions appears to be to get directions from this Court to the police authorities not to interfere with their so-called lawful activities enumerated in the Memorandum of Articles of Association. True the activities indicated in the Memorandum of

Articles of these petitioners' clubs are very much laudable. But the fact with which we are concerned is when any person including the members of the petitioners' clubs or Persons of any other similar clubs or associations indulges in the illegal activities of gaming or keeping common gaming houses, the concerned authorities must be able to deal with them properly, effectively and fairly to achieve the object of the legislature to put down with a heavy hand, the evil of gaming which is very much prevalent in the State. Where the members of club or society confine only themselves to the laudable objects such as promotion of fine arts, cultural and other similar social activities, or playing cards without any bets, for fun or relaxation, no police officer or any other officer would interfere with their activities, nor would they raid any such clubs or societies and cause inconvenience to the members therein. The police officers would come into picture only when they have reason to believe that any activity of gaming is either carried on or likely to be carried on. They only then come into the picture. They have to take the aid of law not only to prevent any such activity but also catch hold of such persons who indulge in the illegal activity of gaming. Even assuming some over-zealous officers take active steps of making raids of any club or society, it is not a ground for this court to hold that the provisions of the Act are unconstitutional or that every police officer would misuse and abuse his powers arbitrarily and according to his whims and fancies and create inconvenience and cause harassment to the members of such clubs. Normally, we presume that all the police officers and the magistrates would discharge their duties properly and satisfactorily unless otherwise proved. In case they exceed their jurisdiction or power, such instances may be brought to the notice of the higher authorities or the persons aggrieved may take the aid of common law and see that such officers are punished suitably. Similar writs were filed previously on three occasions and we hope this is the last batch of such writs in this regard.

31. Petitions dismissed