
(1990) 03 KAR CK 0013

In the Karnataka High Court

Case No : Writ Petition No's. 3395, 5866, 5867, 6011 and 6012 of 1990

M. Radhakrishna

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 21-03-1990

Acts Referred:

Karnataka Police Act, 1963 — Section 2 (14), 31
Mysore Cinematograph Shows Tax Act — Section 2

Citation : (1990) ILR (Kar) 1542

Hon'ble Judges : Chandrakantaraj Urs, J

Bench : Single Bench

Advocate : C.K. Venkatesh, for L. Umashankar, for the Appellant;

Final Decision : Dismissed

Judgement

Chandrakantaraj Urs, J.—A common order is passed in all these Writ Petitions and the facts in W.P. 5866 "of 1990 alone are stated for convenience.

2. The petitioner admittedly is a businessman and ekes out his livelihood by carrying on the business of Video Games at No. 5, S.K.R. Market, West Gate Road, Bangalore. He has alleged that the said Video Games are played on machines and they are not games of chance, but games of skill. He has invested a sum in excess of Rs. 1,00,000/- for purpose of carrying on the said business with the Video Games machines, securing a place to install them and furnish the said place. He has averred that the purpose of establishing the Video Game Parlour A is for the purpose of encouraging the skill of the public in games of skill. Persons who are admitted to such Parlour run by him have to insert a coin in the slot provided for it in the machine and the machine itself automatically switched on for a particular duration during which time the person using the machine could play the game. It is further asserted that the said machines would not endanger human life and public safety. No wagering is permitted in playing such games. He has asserted, carrying on the said game is legal and valid and not in violation of law or rules for the time being. He is aggrieved by the fact that

respondents 5 and 6 constantly visit his Parlour and ask him about a licence which is required to be obtained, despite his assurances and statements that such licence is not required to be taken for running a Parlour which provides a game of skill for the public. He has further alleged that the respondents held out threats to the customers of the petitioners and therefore, aggrieved by such acts and threats and apprehension that he may be prevented from carrying on the games has approached this Court inter alia contending that the action by respondents 4, 5 and 6 and the order passed by the second respondent-Commissioner of Police dated 15th September, 1989 purported to be a Notification issued in violation of principles of natural justice and is liable to be quashed. The reliefs prayed for are as follows:-

"WHEREFORE, it is prayed that this Hon"ble Court be pleased to issue a Writ of Mandamus or any other appropriate Writ, Order or direction, directing respondents not to insist upon the petitioner to obtain any licence either under the provisions of the Karnataka Police Act or under the Licensing and controlling of Places of Public Amusement (Bangalore City) Order 1989 to carry on the Video Games conducted by the petitioner and further grant such other relief or reliefs as this Hon"ble Court deems fit under the circumstances of the case."

3. Mr. C.K. Venkatesh appearing for the petitioners in these petitions has submitted that if the game being a game of skill as asserted, cannot be considered an amusement or the place a public place of amusement as stated in the order and therefore the order passed by the Commissioner had no application and as the order had no application, he need not take out a licence. The argument is not well-founded.

4. Under the Karnataka Police Act, in Sub-section (14) of Section 2, "place of public amusement" is defined as follows:-

"2. Definitions - In this Act, unless the context otherwise requires, -

... .. (14) "place of public amusement" means any place where music, singing, dancing or any diversion, or game, or the means of carrying on the same is provided and to which the public are admitted and includes a race course, circus, theatre, music hall, billiard room, bagatelles room, gymnasium, fencing school, swimming pool or dancing hall."

From the language employed in the definition of the "place of public amusement", the necessary ingredients to bring within its ambit are: the public must have access to the place and anyone of the enumerated or illustrative events are conducted. The definition is not exhaustive, but illustrative. For instance, the expression any diversion or game or the means for carrying on the same is provided and to which public are admitted, clearly indicates that within the definition anything which diverts any person from his usual occupation or enables him to play a game will be an amusement and where that amusement is provided with access to the public as opposed to personal or private, it will be a place of public amusement. In this connection, it will be useful to notice the

meaning of the word "amusement" In English language. Webster's Third New International Dictionary - Volume I, In Column 3 at page 74 gives the following meaning:-

"amuse-ment: n - s often attrib (F.fr.MF, frameset + ment) 1 obs a: BEWILDERMENT b: diversion of the attention (as from the truth or one's real intent): DISTRACTION 2a: a means of amusing or entertaining (what are your favourite - a) b: the condition of being amused (his - knew no bounds) c: pleasurable diversion: ENTERTAINMENT (he plays the piano for his own)."

From the above, it is clear that any game which diverts a person from his usual occupation for entertainment would constitute "amusement" which can even be listening to music or playing musical instrument or playing any game of skill or no skill which will give amusement to the person playing. A case of even watching a game being played would cause an amusement, for instance witnessing a cricket match, circus or cinematographic show etc. In that view of the matter, it would be incorrect for the petitioners to assert that the Video Games are not games of amusement merely because it is supposed to assist the person playing the games to acquire skill. This is best illustrated by the following. The person who has acquired the skill of playing the game does not stop visiting Video Parlors because he has acquired the required skill. He is likely to go back to it again and again for amusement. Viewed thus, the Parlour run by the petitioners are places of amusement as defined u/s 2(14) of the Karnataka Police Act is not left in doubt. If they are places of amusement, they are covered by the order issued u/s 31 of the Police Act by the Commissioner of Police. Relevant portion of Section 31 of the Police Act reads as follows:-

"31. Power to make orders for regulation of traffic and for preservation of order in public places, etc.,

(1) The Commissioner and the District Magistrate, in areas under their respective charges or any part thereof, may make, alter or rescind orders not inconsistent with this Act, for -

(a) licensing and controlling persons offering themselves for employment at quays, wharves and landing places, bus stands and outside railway stations,1 for the carriage of passengers" baggages and fixing and providing for the enforcement of a scale of charges for the labour of such persons so employed;

... ..

(w)(i) licensing or controlling places of public amusement or entertainment;

(ii) prohibiting the keeping of places of public amusement or entertainment or assembly, in order to prevent obstruction, inconvenience, annoyance, risk, danger or damage to the residents or passengers in the vicinity;

(iii) regulating the means of entrance and exit at places of public amusement or entertainment or assembly and providing for the maintenance of public safety

and the prevention of disturbance thereat;

... ..

In addition to this, it will be useful to refer to the decision of Supreme Court in the case of Y.V. SRINI-VASAMURTHY AND ORS. v. THE STATE OF MYSORE AND ANR. AIR 1959 SC 894 and it is as follows:-

"(b) Mysore Cinematograph Shows Tax Act (16 of 1951), Section 2 - Tax on Cinema shows -Validity - Tax covered by List II Entry 62 - Amusement includes cinema - Entry 62, 33; List I, Entry 60 - (Words and Phrases - Amusements) .

The argument that law made with respect to Entry 62 cannot permit imposition of mentioned in Entry 33 has been omitted from Entry 62, is without any substance. The words "entertainments" and "amusements" in Entry 62 are wide enough to include, theatres, dramatic performances, cinemas, sports and the like. If this argument is correct, then, on a parity of reasoning, the State Legislature will have no competence to enact a law imposing a tax on theatres or dramatic performances or sports, for none of those words are mentioned in Entry 62. This is sufficient to repel the argument. The truth of the matter is that "cinema" had to be specifically mentioned in Entry 33 of the List II in order to avoid any possible conflict between it and Entry 60 in List I."

Therefore, there is no doubt whatsoever that under law, the activities of the petitioners do fall within the definition of "Places of public amusement" and therefore are governed by the order passed by the Commissioner.

5. u/s 3 of the Order, the mode of making the application to conduct or organise any public amusement is set out. u/s 4, it provides for grant or refusal of licence with which we may not concern ourselves in these Petitions. But it will be useful to refer to certain aspects of Section 4 which requires the Commissioner, the Licensing Authority to get the reports or certificates whenever necessary from Executive Engineer, Public Works Department the Health Officer, the Officer of the Electrical inspectorate and the Fire Officer which are Indicative that where public have free access to the place such places must be considered to be places that must be known to the Licensing Authority in order to maintain public order if and when It becomes necessary and also to enforce the law, that is, the Police Act. Viewed thus, the insistence by respondents 4 and 5 that the petitioners must take out licence under the order impugned cannot be said to be unjustified or arbitrary opposed to fundamental rights guaranteed to the petitioners and other citizens under our Constitution. Regulatory powers cannot be read as prohibitory. The Police Act and the order passed under it is law made by Legislature and any reasonable restriction by such laws must be sustained by this Court and they are so sustained.

6. Before parting with this case, I must however notice that the learned Counsel brought to my notice two decisions of the Supreme Court. They are Sundarjas Kanyalal Bhathija and others Vs. The Collector, Thane, Maharashtra and others, .

The observations relied upon have absolutely no relevance to the facts of the case. The said decisions cannot be read as a fetter on the Judges of the High Court to function judicially and relegate themselves to be no more than electronic machines to respond to the press button mechanism of the advocates who claim that similar matters have been admitted and therefore a particular matter also should be admitted. The observations made must be understood to "have been made in the context of those cases.

7. In the first of the cases to which I have already made a reference in an earlier decision rendered by me, I have pointed out that that case cannot bind a High Court Judge because the facts of the case are not set out and circumstances under which the observations were made are also not amplified by any reason and therefore cannot act as a binding precedent under Article 141. In the second case, the Judges have done no more than state the principles of precedents. The learned Counsel has not pointed out a decision of this Court or any other Court which binds me from rendering a decision in this case contrary to such decision, A simple act of issuing notice or rule nisi does not amount to creating a precedent. To be a judicial precedent understood as such, it should be a Judgment of the Court decided on the facts of a case giving cogent reasons, after hearing arguments of the parties contesting and raising issues before it. When that is absent, it cannot be a precedent and the mere fact that another Judge of this Court, had issued notice or admitted the Petition does not amount to a binding precedent and the Counsel should be careful when authorities are cited without realising what they are doing or the purpose of such citation.

Subject to the above observation, these petitions are dismissed.