
(2006) 05 CAL CK 0049
In the Calcutta High Court
Case No : Writ Petition No. 654 of 2006

Narendra Kochar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-05-2006

Acts Referred:

Constitution of India, 1950 — Article 14

Contract Act, 1872 — Section 30, 31

West Bengal Gambling and Prize Competitions Act, 1957 — Section 2

Citation : (2006) 4 CHN 307

Hon'ble Judges : V.S. Sirpurkar, C.J.;Soumitra Sen, J

Bench : Division Bench

Advocate : Jayanta Kumar Mitra, Jayjit Ganguly, Sayantan Bose and Jai Surana, for the Appellant;None, for the Respondent

Final Decision : Dismissed

Judgement

V.S. Sirpurkar, C.J.—This is a very unusual petition filed by a person who claims to be a public minded person and describes himself in paragraph 3 of the petitioner as a citizen of India entitled to be ensured that the rule of law is upheld and every offender is treated equally by law as envisaged under Article 14 of the Constitution. Beyond that the petitioner has not in any manner shown his credentials in the society, his status in the society or even his role as a person having experience in the matter.

2. There is nothing stated about the status of the petitioner or his standing or for that matter even as to his avocation in life or his qualifications. A complaint is made against the gambling which goes on in the television channels sponsored by various manufacturers or sponsors in the form of various competitions. The petitioner has referred to the Bombay Prevention of Gambling Act, the Madras Gaming Act, the Hyderabad Prevention of Public Gaming Act and the West Bengal Gambling and Prize Competitions Act of 1957.

3. The definition of gambling as it is found in various dictionaries is relied on and

thereafter a reference is made to Sections 30 and 31 of the Indian Contract Act which declares that the wagering contract is a nullity. The provisions of the West Bengal Act, referred to above, are then brought out in the petition and ultimately in paragraph 17 the petitioner refers to various private channels including the Star TV Group, Zee Group, the Sony Group etc. According to the petitioner these channels are presently ruling the television world. It is then pointed out that each of the television channel in connivance with the communication channel providers to have unjust enrichment, indulge in programmes whereby citizens are induced to participate in chance game and hence to gambling. The petitioner has then made a specific reference to "the heavy weight programmes" like Indian Idol, Sa re ga ma, Deal ya no Deal, all live cricket and major sporting events, Aisa Des hai mera etc. It is then pointed out that in order to take part in those competitions, a viewer has to send a short message service (hereinafter called SMS in short) and though the rate of ordinary SMS is one rupee per SMS when a viewer has to take part in such competition the rate is six rupees. The petitioner then says that from correct entries the ultimate winner is selected by putting a lottery. This, according to the petitioner, is gambling. The petitioner also makes a reference to various attractive prizes offered in those competitions like Maruti Wagon R, Blackberry Mobile set, gift vouchers etc. and contends that even sending SMS which costs six rupees in place of ordinary one rupee amounts to wagering on the part of the viewer who takes part in those competitions. The petitioner then has described that this has caused ill effect on the society in general and children in particular. The petitioner calls such partaking in the competitions as electronic gambling. He has also made a reference to Entry 34 or Entry 62 of the State List in the Seventh Schedule and puts it that it is for the legislature to prevent the public gambling house from being maintained. The petitioner has also tried to describe the ill effects of the mobile phones and maintains that all these are crippling the society.

4. The petitioner then complains that there is inaction on the part of the seven respondents to this petition, they being Union of India; Secretary, Ministry of Information and Broadcasting, Government of India; Secretary, Ministry of Communication and Information Technology, Government of India; Secretary, Ministry of Law & Justice, Government of India; State of West Bengal; Secretary, Ministry of Home, Government of West Bengal, the Telecom Regulatory Authority of India as also Bharat Sanchar Nigam Limited and Chairman, Prasar Bharati Board. In addition to that the petitioner has joined all the major channels and has thus ended up joining 15 respondents in this jumbo petition which runs into 53 pages. In short, the petitioner's case is that taking part by a viewer in any competition floated by any television channel amounts to gambling.

5. Sri Jayanta Kumar Mitra, a learned senior Counsel of this Court argues in support of this petition heavily relying himself on the provisions of the West Bengal Gambling and Prize Competitions Act, 1957. He invites our attention to the "common gaming house" u/s 2(a) and the definition of gaming and gambling in Section 2(b). He points out that gaming or gambling includes wagering or

betting except wagering or betting on a horse race. His case is that by taking part in those competitions where the concerned viewer is asked his opinion about a particular performer or where a viewer is asked to guess as to what would be the score by a particular team in a particular game. According to learned Counsel, if a viewer takes part by sending SMS, then such viewer has taken part in gaming or gambling and for that purpose his house itself becomes a common gaming house.

6. In our opinion, this is entirely a misreading of the provisions. Such can never be a gaming or gambling for the simple reason that in sending the SMS there is no betting involved on the part of the viewer. He does not put in any amount on a bet nor is that money accepted by the sponsor of such programme. The viewer is to judge and send his judgment. In that, the viewer is to assess various performances of those who are taking part in the music competition or drama competition etc. There is no monetary involvement by the viewer excepting that he send his opinion by SMS which costs more than the ordinary SMS rate. There is no averment that any part of those increased amount of SMS goes somewhere to the sponsored companies. There is no averment to the effect that the viewer is to pay something to take part, as if the viewer is indulging in wagering or betting. If taking part or simply by sending SMS in a competition amounts to betting, as alleged by the petitioner, the result would be devastating. In our opinion, there is no betting or wagering on the part of the person or viewer sending an SMS the same cannot be termed as gaming or gambling.

7. There is one another reason. In judging the performance of a particular entry or entries or in judging the performance of a singer, the viewer has to assess the performance or to use his knowledge of music or drama, as the case may be. In guessing as to what the score would be, the viewer must have necessary knowledge of the game. He must have also the overall knowledge of the performance of both the teams. It is not a mere wagering or game of chance in that the viewer has to use his skill and it is an accepted position in law as to where a viewer has to use his assessment or skill, it cannot amount to gaming.

8. We are, therefore, not impressed by the argument advanced by Mr. Mitra that such competitions which are floated on the T.V. channels amount to gaming exercise or for that purpose the whole area becomes a common gaming house. This is apart from the fact that the petitioner seems to have chosen to come before us for a publicity. He has not done any research. He has not approached any of the respondents pointing out his view. He has not also shown any special knowledge in the matter. This appears to us as a publicity stunt so that the petitioner becomes famous in one night by filing a petition and getting the notices of the petition sent to all those respondents including all the channels which are particularly the major channels on the Indian screen. We are, therefore disapprove of such petition. The petitioner has not shown that he had even approached any of the T.V. channels and complained that this amounts to wagering. It seems, relying on his half knowledge of law the petitioner has filed

the present petition.

9. Therefore, we dismiss the petition with exemplary cost of Rs. 25.000/-to be paid to the Legal Aid Services, High Court, Calcutta.

10. Xerox certified copy of this judgment and order be made available to the parties, if applied for on the usual undertakings.

Soumitra Sen, J.

11. I agree.