
(1954) 07 GAU CK 0008
In the Gauhati High Court

S.K. Das

APPELLANT

Vs

District Magistrate

RESPONDENT

Date of Decision : 13-07-1954

Acts Referred:

Constitution of India, 1950 — Article 226
Public Gambling Act, 1867 — Section 5

Citation : AIR 1955 Guw 84

Hon'ble Judges : Sarjoo Prosad, C.J

Bench : Single Bench

Judgement

Sarjoo Prosad, C.J.—This is an application under Article 226 of the Constitution in which the petitioner has prayed for a writ or direction for quashing the order of; the District Magistrate, United Khasi and Jaintia Hills, Shillong, dated 9-9-1953.

2. The petitioner is the Honorary Secretary of the Club known as the "Evening Club" situate in the town of Shillong. The Club was registered, under the Societies Registration Act, 1860 as early as 9-8-1951. The petitioner states that the Club consists of about 500 members and amongst others the object of the Club is to provide facilities for various indoor and outdoor games including the game of "Housie". This appears to be a popular game, which, according to the statement in the petition and also as admitted by the opposite party, is played in various other Clubs in Shillong also. The petitioner asserts that this Game does not constitute any gambling within the meaning of the Public Gambling Act. The Deputy Commissioner of Shillong by his order, dated 12-9-1952 laid down certain conditions under which the game of "Housie" was to be played by the members of the club.

The petitioner contends that even this order imposing the conditions was illegal and without any Jurisdiction but nonetheless, he submitted to those conditions because they were wholesome. He submits that throughout the period the game of "Housie" was being conducted strictly in accordance with the condition as laid down in the said order of the Deputy Commissioner and the undertaking given by

the Club. On the 11th September, however, the petitioner received another letter dated 9-9-1953 from the Deputy Commissioner containing the order in question. This order is in the following terms:

There is reason to believe that you are allowing non-members to participate, in "Housie" played in your Club, and further you have not complied with all the conditions as laid down in this office letter No. C. 1/52/1525 C & S dated 12-9-1952.

You are therefore, ordered to stop playing the game of "Housie" with immediate effect.

3. The order is challenged by the petitioner as being entirely uncalled for & without any warrant in law. He contends that the District Magistrate of Shillong had no jurisdiction to pass such an order stopping the members of the Club from playing the game of "Housie" altogether and if the District Magistrate was of opinion that the game of "Housie" as played in the Club constitutes gambling within the meaning of the Public Gambling Act, then the proper procedure for him to adopt was to take action u/s 5 of the Public Gambling Act and not to stop the game of "Housie" altogether as he purports to have done by the order aforesaid.

The learned Senior Government Advocate on behalf of the opposite party, the District Magistrate of Shillong, whose order is challenged before us, concedes that the game of "Housie" is not an act of gambling by itself and this game is also played in various other Clubs of Shillong. He also concedes that strictly speaking, the order passed by the learned District Magistrate does not come under any provision of the law. He, however, submits that the order may be construed as coming within the purview of Section 5, Public Gambling Act. He also submits that the order amounts to nothing more than recalling the previous order which had been passed by the Deputy Commissioner on 12-9-1952 imposing certain conditions under which the game of "Housie" was allowed to be played by the Club of the petitioner.

According to his contention, the previous order had led to some misapprehension in the mind of the tribal people living in the locality that the Deputy Commissioner or the authorities concerned had countenanced some sort of gambling in the form of "Housie" in the Club in question and that attracted many of those people to participate in that game in this Club. It was therefore to remove this misapprehension that action had to be taken, by the Deputy Commissioner recalling his previous order imposing the conditions aforesaid and directing that the game of "Housie" as played in the Club should be stopped altogether inasmuch as it amounted to an act of gambling on the part of the Club.

We are not convinced, having examined the provisions of Section 5 itself, that any such order could be passed by the District Magistrate. Section 5, Public Gambling Act is sufficiently expressive. It provides that if the Magistrate of a district or other officer invested with such powers or the District Superintendent

of Police, have credible information and have reasons to believe on proper enquiry that any place or enclosure is used as a common gambling house, the officer may himself or authorise someone else to enter on the premises by force, if necessary, and may take into custody or authorise such officer to take into custody all persons whom he or such officer finds therein engaged in the act of gaming. It is also open to the officer under the authority of that section to seize all instruments of gaming and moneys and securities for money and articles of value reasonably suspected to have been used for the purpose of gambling. This section nowhere authorises the District Magistrate to pass an order of the kind which he purports to have done stopping the play of the game of "Housie" altogether with immediate effect from the date of the order.

The Deputy Commissioner in showing cause appears to have suggested that the play of "Housie" as conducted in this Club amounts to an act of gambling. If that is so, then the District Magistrate should have taken appropriate action within Section 5 of the Act and not have proceeded to pass an order which on the face of it is not a legal order. He had no right to stop "Housie" altogether which admittedly is being played as a game not only in this Club but also in various other clubs of Shillong. The order in question undoubtedly interferes with the right of the members of the Club to indulge in a game or pastime which they consider to be entirely lawful and innocuous.

Mr. Fakaruddin Ahmed, on behalf of the petitioner has contended that in fact this Club has been strictly observing the conditions which legally or illegally were imposed by the authorities on 12-9-1952, and there was no justification for the assumption that the Deputy Commissioner appears; to have made in thinking that this Club was countenancing some kind of gambling under cover of the game of "Housie". Whatever the position may be, the Deputy Commissioner had ample jurisdiction to act u/s 5 & to prosecute the persons who may be found to be gambling or engaged in the act of gambling actually on the premises, but the order in question in our opinion, is absolutely unwarranted.

4. We accordingly quash the order and make the Rule absolute. In the circumstances, we do not propose to make any order for costs of this application.

Deka, J.

I agree.