

(1976) 06 AP CK 0007

In the Andhra Pradesh High Court

Case No : Writ Petition No. 2797 of 1974

Ventrappagada Venkata Krishna Rao

APPELLANT

Vs

The District Magistrate and Another

RESPONDENT

Date of Decision : 02-06-1976

Acts Referred:

Andhra Pradesh (Andhra Area) Places of Public Resort Act, 1888 — Section 12, 4, 7, 9
Constitution of India, 1950 — Article 162, 19(1), 19(6), 226

Citation : AIR 1977 AP 128 : (1977) 1 AnWR 41 : (1976) 2 APLJ 61

Hon'ble Judges : Sambasiva Rao, J;Gangadhara Rao, J

Bench : Division Bench

Advocate : Y. Suryanarayana, for the Appellant; Government Pleader and S. Venkateswara Rao, for the Respondent

Judgement

Sambasiva Rao, J.—The petitioner has been running an amusement park under the name and style of "Variety Amusement Park" at Pithapuram in East Godavari District, after having obtained a licence therefore from the Commissioner and Special Officer of the Municipality (Second Respondent) u/s 7 of the Andhra Pradesh (Andhra Area) Places of Public Resort Act., 1888 (hereinafter referred to as "the Act."). The licence was originally issued for three months on 21-12-1973. The licence was renewed by the same respondent for a further period of three months. The petitioner was permitted under the licence to conduct dramas, dances, music performances and skill games viz., darts and shooting galleries. However, a show cause notice dated 28-4-1974 was issued by the District Magistrate East Godavari (First respondent) to show cause why the licence of 21st of December, 1973, issued by the Second respondent and later renewed by him should not be cancelled u/s 12 of the Act. with immediate effect. The ground indicated in the show cause notice for the proposed cancellation was contravention of instructions of the Government issued in G. O. Ms. 6574 Government issued in G. O. Ms. 6574 dated 21-12-1939 as amended in G. O. Ms. 1951 dated 13-7-1958, while issuing the licence. Though an explanation was sent up by the petitioner, the First respondent, purporting to Act. u/s 12 of the

Act., revoked the licence and its renewal by his proceedings dated 10th May, 1974. Following up the said order the Second respondent also issued consequential orders directing the petitioner to stop the running of amusement park. This writ petition has been filed for quashing these orders of the First and Second respondents.

2. The challenge against the two orders are founded on the following arguments.

1. There is no power in the First respondent to revoke the licence granted by the Second respondent who is the competent authority, u/s 9 of the Act.

2. The licence granted on 21-12-1973 became final and in fact it was renewed. The First respondent cannot purport to revise such an order, acting u/s 12.

3. In any case, the power u/s 12 can be exercised only if the requirements of Section 9 exist and those requirements are not present in the present case.

4. The Act. and the rules made thereunder do not contain a list of prohibited games. In the absence of such a provision, a mere administrative instruction or direction by the Government cannot entail revocation. Only by a provision in the Act. itself or through rules, prohibited games in amusement parks can be prescribed and not under administrative instructions.

5. The finding in the order is based on no evidence and is opposed to the principles of natural justice.

6. The only ground mentioned in the show cause notice is contravention of the orders of the Government. The order of cancellation, however, is based not only on the ground of contravention of the instructions contained in the two G. Os. but also on the ground that there was side betting. The petitioner has not been afforded any opportunity to meet this latter charge.

7. By the date of revocation there was only an allegation of side betting and there was no proof thereof. The criminal case filed against the petitioner in regard to side betting was thrown out by the judicial First Class Magistrate, Pithapuram.

3. Broadly analysed these contentions though seven in number, come under two categories. The first four relate to the power of the First respondent who revoked the licence on the ground of the original licence not being in accordance with the instructions given by the Government in the two impugned G. Os. The other three arguments relate to the failure of the First respondent to give the petitioner an adequate opportunity to meet the allegation of side betting.

4. Before we go into the merits of these contentions, we must take note of the learned Government Pleader's objection that the Writ Petition has become infructuous in view of the fact that even the period for which original licence had been renewed has also expired. We are not, however, inclined to uphold this objection, for the grounds on which the licence is revoked by the First respondent are that the licence granted by the Second respondent is not in

accordance with the instructions issued by the Government and that there was side betting in the amusement park. If these two grounds are true and subsisting, they will affect the petitioner not only in respect of the period of renewal but also in respect of his very eligibility to get a licence. It should be remembered that even the original licence is cancelled even though its period had expired. That was done on the stated ground that the Second respondent had given licence for playing darts and maintaining shooting galleries. If that is upheld, the petitioner could never hope to get a licence in respect of these games. Thus, the basic and continuing right of the petitioner to obtain licence in regard to darts and shooting galleries is in question in this writ petition. His grievance, therefore has not disappeared with the expiry of the period of renewal and it still continues. So, it cannot be said that the writ petition has become infructuous.

5. The contention that the First respondent has no power to revoke the licence granted by the Second respondent is without any force. It is no doubt true that Section 9 of the Act. authorises the authority granting a licence to revoke or suspend it for reasons recorded in writing when he has reason to believe that the licence has been fraudulently obtained, or that the enclosed place or building has been used for other purposes of public resort or entertainment than that for which the licence was granted or that the place or building can no longer be safely used for the purpose for which the licence was granted. If an order is made u/s 9 by the licensing authority, an aggrieved party may prefer an appeal u/s 10. However Section 12 creates the power in the District Magistrate to revise any proceeding under the Act. Let us read the provision in its entirety. It is as follows:

"The District Magistrate may call for and examine the record of any proceeding taken under this Act., may call for any report in connection therewith, may make or cause to be made any further inquiry, and may pass any order which the authority holding the proceeding might have passed."

6. It is immediately seen that not merely the title of the section but also its very language is in very wide terms, thus creating for it a wide amplitude. In exercise of the power under this section, District Magistrate may call for record of any proceeding under the Act. and examine it. Certainly the expression "any proceeding under this Act." must necessarily include granting of a licence u/s 7, Otherwise, the expression would become meaningless and nugatory. Then the District Magistrate is also empowered to call for any report in connection with the proceeding in which he has chosen to call for records. That means he is empowered to get any new material in respect of the proceeding under examination and which he has called for. Likewise he may also make or cause to be made any further inquiry in respect of that proceeding. What is equally important is the provision that after doing this, he may pass any order which the authority holding the proceeding might have passed. To put it in other words, the District Magistrate, while exercising this power u/s 12 can make any order which

the licensing authority, who has earlier passed the proceedings, could have passed. We have already seen that the authority, who grants a licence can also revoke or suspend the licence u/s 9. Therefore, the District Magistrate also can revoke or suspend the licence which has been earlier granted by the appropriate authority. This demonstrates that the argument advanced that the First respondent has no power to revoke the licence granted by the competent authority and that power is confined only to the licensing authority, is without any merits.

7. To the same effect is the second contention. It is argued that the licence granted on 21-12-1973 has become final and has also been renewed, and that in such cases the power of revision does not exist. This is once again misreading the cope of Section 12. As we have already pointed out, the legislature has made the ambit of Section 12 very wide by providing that the Magistrate may call for and examine the record of any proceeding taken under the Act. and may pass any order which the original authority might have passed. So much so, even if the authority granting the licence does not seek to interfere with the licence on its own accord the District Magistrate can interfere in exercise of his powers u/s 12.

8. The next argument is that even supposing that revisional power exists u/s 12, still it can be exercised only if the requirements of Section 9 exist. It is argued that none of the reasons mentioned in Section 9 for revocation or suspension of a licence exist in this case. Indeed the revocation under mentions two grounds of non-compliance with requirements of the two Government orders and side betting and neither comes under clauses (a)(b) and (c) of Section 9. All this argument is built upon the basis of the last portion of Section 12 viz., "the District Magistrate may pass any order which the authority holding the proceeding might have passed". Since the power of the District Magistrate is limited to the scope of the power exercisable by the authority granting a licence, it is argued that the revocation or suspension can be ordered only if any one of the three provisions of Section 9 exists. This argument is not convincing for more than one reason. In the first place, the District Magistrate is empowered to make any order which the licensing authority can pass which includes revocation or suspension. The section does not say that passing of this order by the District Magistrate should be only for the three reasons mentioned in Section 9. Seeing the very wide powers conferred on the District Magistrate u/s 12, it is difficult to hold that his action is limited only to the three grounds mentioned in Section 9. Otherwise the section would have also stated that the District Magistrate may pass any order for the reasons for which the licensing authority could have passed such order. What the last portion of Section 12 says is that the nature of the order should be the one which the authority holding the proceeding might have passed. In this case he is empowered to pass the order of revocation or suspension of licence; The provision does not go further and say that such an order of the District Magistrate should be for the reasons which the lower authority could have passed the order.

9. Further, the ground mentioned in the order of revocation comes under clause (b) of Section 9. One of the grounds for revocation is that there was a side betting in the amusement park. Certainly that is not a purpose for which the licence was granted to the petitioner. The District Magistrate has come to the conclusion that the amusement park of the petitioner was being used for having side betting which is not a purpose for which the licence was granted. Consequently, the order comes squarely within the scope of clause (b) of Section 9. Viewed in this angle the arguments advanced by the learned counsel is without any force.

10. The next argument is that neither the Act. nor the rules contain any list of prohibited games. The Government by an administrative fiat cannot introduce new prohibitions and on that basis cannot revoke or suspend licences. It is also urged by Sri Suryanarayana, learned counsel for the petitioner, that the District Magistrate is wrong in thinking that the grant of permission by the Second respondent to the petitioner to conduct the performances like skilled games viz., darts and shooting galleries is not in accordance with the instructions of the Government issued in G. O. Ms. No. 6574 dated 21-12-1939 as amended in G. O. Ms. No. 1951 dated 13-7-1958. There is no prohibition against any games in the two G. Os. and what all is contained in G. O. Ms. No. 1951 dated 13-7-1958 is only deletion of certain games from the list of permissible games in amusement parks. When there is no prohibition, the District Magistrate erred in saying that the licence granted by the Second respondent is not in accordance with the G. Os.

11. We will first deal with the latter part of this argument. It is true that the District Magistrate took objection to the granting of licence for playing darts and keeping shooting galleries in the amusement park. In G. O. Ms. No. 6574 Date 21-12-1939 the Government of Madras said that no licence should be issued to places of entertainment or public resort where games of pure chance or games which, though purporting to be games of skill are merely games of chance are to be exhibited. The G. O. further said that games in which skill, accuracy of aim, or strength count for gaining as a prize as for instance, Ring Board, Darts, Coconut shives, Aunt Sally or their Indian equivalent, shooting galleries and similar games may be allowed to be exhibited at such places. However, in G. O. Ms. 1951 dated 13-7-1958 the Government noticed that these games in practice are reduced to games of chance by providing bets in playing them. Therefore, the Government stated in the latter G. O. that since it is not possible to lay a hard and fast rule for distinguishing between "skill" and "chance" games and in view of the fact that the so called skill games exhibited in the amusement parks are doing disservice to the public by way of exploitation to poor and ignorant people, the words occurring in the earlier G. O. "as for instance ring board, darts coconut shives, aunt-Sally or their Indian equivalent shooting galleries and similar games" be deleted. No doubt this is a deletion from the G. O. of 1939. But the significant fact is that in the 1939 G. O. it is said that these games may be allowed to be exhibited at such places on the supposition that in these games

i.e., skill, accuracy of aim, or strength are the main criteria. In view of the changed circumstances and the complaints received that these games are more often than not being used as chance games, the Government directed that these games must be deleted from the list of permissible games. In other words, the Government directed that the licensing authority, while giving licence shall not permit these games to be played in the amusement parks in places of public resort. Reading, the two G. Os. together, it is abundantly clear that by virtue of the omission of these games from the permissible activities, the licensing authority is prevented from granting permission for playing these games in places of public resort. Therefore, it has to be held that the licence given by the Second respondent and renewed by him is not in accordance with G. O. Ms. No. 6574 as amended by G. O. Ms. No. 1951.

12. Sri Suryanarayana also argues relying on *Saligram Khetry Vs. Emperor*, In *In Re: Manavala Naidu and Others*, and Criminal Appeal No. 347 of 1960 dated 5-7-1961 that game of darts is a game of skill. The Calcutta case arose under the Calcutta Police Act. and Madras case under the Madras Gaming Act. The decision in *Crl. A. No. 347/60* is also a case which arose under the Gaming Act. In the *Saligram Khetry Vs. Emperor*, it was held that the question whether or not the game is of mere skill is a question of fact. To find out whether it is a game of skill or game of chance the real test is whether there is any external thing or fortuitous circumstances which may interpose between the action of the player and the result to be attained and whether the media or instruments of the operation are ascertained the moment the game begins. In the *In Re: Manavala Naidu and Others*,) it was held that the side is not one of merely a game of darts. It has shooting galleries as well. Further, the finding of the District Magistrate is that there was side betting attendant on these games. May be that game of darts and shooting galleries simpliciter, without anything more, are games of skill, but it is easy to convert these games into those of chance. That depends upon the facts and circumstances in which these games are played. In view of the oft repeated complaint that these games are reduced to games of chance in places of public resort the Government altogether deleted these games from permissible games. In these circumstances, particularly when these games are found to be played with side betting there is no point in emphasising that these games are only games of skill.

13. The next objection, which is submitted by the learned counsel, is that since there is no prohibition against these games either in the Act. or in the rules made thereunder, the executive cannot introduce new prohibitions by administrative instructions. This argument is sought to be answered by the learned Government Pleader by relying on Article 162 of the Constitution, wherein it is declared that the executive power of a State shall extend to matters with respect to which the Legislature of the State has power to make laws. Relying on this provision it is argued for the respondents that since there is nothing in the Act. or the rules on this aspect of the matter, the Government certainly has power to issue administrative instructions in regard to it. Learned

counsel for the petitioner invites our attention in support of his argument to some decisions which we shall deal presently. Firstly he relies in *Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab*, The question in the case was whether the series of notifications issued by the Punjab Government regarding the printing, publication and sale of textbooks had placed unwarranted restrictions on the rights of the petitioners to carry on their business. Dealing with the question, Mukherjee, C. J., dealt with the scope of Articles 162 and 73 of the constitution. The learned Chief Justice observed that neither of the two articles contain any definition as to what the executive function is and what activities would legitimately come within its scope. They are concerned primarily with the distribution of the executive power between the Union on the one hand and the State on the other. They do not mean that it is only when the Parliament of the State Legislature has legislated on certain items appertaining to their respective lists, that the Union or the State executive, as the case may be, can proceed to function in respect of them. On the other hand, the language of Article. 162 clearly indicates that the powers of the State Executive do extend to matters upon which the State Legislature is competent to legislate and are not confined to matters over which legislation has been passed already. This is a clear enunciation of the scope of Article. 162 that the power of the executive does extend to matters upon which the State Legislature is competent to legislate.

14. The next decision relied on is *B.N. Nagarajan and Others Vs. State of Mysore and Others*, . It is a case which arose under Article. 309. However, the passage that is relied on is at p. 1944 and is in the following terms.

"We see nothing in the terms of Article. 309 of the constitution which abridges the power of the executive to act under Article. 162 of the Constitution without a law. It is hardly necessary to mention that if there is a statutory rule or an act on the matter the executive must abide by that Act. or rule and it cannot in exercise of the executive power under Article 162 of the Constitution ignore or act contrary to that rule or Act."

15. The proposition laid down in these observations is self evident. If there is an Act. or rule in respect of a matter, the executive has only to abide by it and it cannot trench on the field covered by the Act. or the rules in exercise of its executive power under Article. 162. Nobody disputes this proposition.

16. In *State of M. P. v. Bharat Singh* AIR 1967 SC 1170, which is the next case relied on for the petitioner it was said that the State or its officers in exercise of executive authority cannot infringe rights of citizens merely because Legislature of State has power to legislate in regard to the subject on which the executive order is passed. The same considerations which apply to an act of the Legislature in regard to its constitutional validity would apply to the executive order of the State and so the executive cannot infringe citizens' rights any more than the legislature. This does not help the contention of the learned counsel that even when the Act. and the Rules are silent on a particular aspect, the executive

cannot issue administrative instructions.

17. A passage in Chief Settlement Commissioner, Rehabilitation Department, Punjab and Others, etc. Vs. Om Prakash and Others etc., to the effect that the notion of inherent autonomous law making power in the executive administration is a notice that must be emphatically rejected is brought to our notice by Sri Suryanarayana. It is a well laid canon of law and the respondents' counsel does not dispute it.

18. But the question is whether the Government can issue instructions where the statute and the rules are silent, in exercise of its powers under Article. 162. The main provision in Article. 162 is that subject to the provisions of the Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws. To put it in other words, the executive power of a State is extensive with that of the law-making power of the Legislature. If there is no enactment, certainly the executive power can carry on the administration by issuing administrative directions or instructions, until the Legislature makes a law in that behalf. It cannot wait until the Legislature passes a law. Since it is an imperative need of any executive to carry on the administration, it can carry on its functions on the administrative directions and instructions which it has issued. Otherwise the administration of the State would come to a standstill. That is why Article. 162 has made this provision. From this it must necessarily follow that if a State Legislature makes a law the executive power must abide by it and is precluded from substituting its own instructions in the place of a statute made by the Legislature or any part thereof. Its executive power to issue instructions cannot be exercised in relation to the field covered by the enactment of Legislature. However, even when there is an Act. of a Legislature on a particular subject and if there are certain gaps or untouched aspects either by the Act. or the rules, certainly the executive power of a State can issue instructions in respect of these matters which are not covered by the statute or the rules. That is the full implication of Article. 162.

19. Let us refer to a few decisions on this aspect of the matter. In T. Cajee Vs. U. Jormanik Siem and Another, , the Supreme Court was dealing with the validity of removal of the respondent before it by the executive Committee of a District Council in the United Khasi and Jaintia Hills District. The challenge of removal was based on the absence of any rules for that purpose. However, reliance was placed on the power of the executive to pass such an order in the absence of any rules. Wanchoo, J., (as he then was) dealing with the question observed at p. 281.

"The Sixth Schedule vested the administration of the autonomous districts in the Governor during the transitional period and thereafter in the District Council. The administration could only be carried on by officers like the Siem or Chief and others below him, and it seems to us quite clear, if the administration was to be carried on, as it must, that the Governor in the first instance and the District Councils after they came into existence, would have power by virtue of the

administration being vested in them to appoint officers and others to carry on the administration.

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"The Constitution could not have intended that all administration in the autonomous districts should come to a stop till the Governor made regulations under para 19(1)(b) or till the District Council passed law under para. 3(1)(g).

"The Governor in the first instance and the District Councils thereafter were vested with the power to carry on the administration and that in our opinion included the power to appoint and remove the personnel for carrying on the administration. Doubtless when regulations are made under para 19(1)(b) or laws are passed under para 3(1) with respect to the appointment or removal of the personnel of the administration, the administrative authorities would be bound to follow the regulations so made or the laws so passed. But from this it does not follow that till the regulations were made or the laws were passed, there could be no appointment or dismissal of the personnel of the administration."

20. In *Sant Ram Sharma Vs. State of Rajasthan and Another*, . It was held that it cannot be said that till statutory rules governing promotion to selection grade posts are framed, Government cannot issue administrative instructions regarding principles to be followed. While laying down this rule the Court followed its earlier decisions in *B.N. Nagarajan and Others Vs. State of Mysore and Others*, and *T. Cajee Vs. U. Jormanik Siem and Another*,

21. The above discussion shows that when there is no law made by the Legislature or rules made by the appropriate authority covering a particular aspect, the executive authority, in exercise of the powers conferred on it under Article. 162, can carry on the administration with the aid of its own directions or instructions. It is undoubted that in the present Act. and the rules made thereunder, there is no provision enumerating the games and activities which can be permitted in places of public resort. In the very nature of things neither the Act. nor the rules can contain a list of such games and activities. Section 4 of the Act. refers to application for licence and what it must contain. It requires the person who wants to obtain a licence under the Act., to send an application to the proper authority containing all the particulars including "the purpose for which it is proposed to be used". So, it is for the applicant to mention the purpose for which he proposes to use the place of public resort or entertainment.

22. The authority is required to grant a licence u/s 7 only when it is satisfied that the enclosed place or building can safely be used for the purpose of public resort or entertainment propose of public can safety be used for the purpose of public resort or entertainment propose and that no objection, arising from its situation, ownership or the purpose proposed exists. That is to say, a licence will have to be given if there is no objection in addition to others, to the purpose proposed. Reading Sections 4 and 7 together it is abundantly clear that the applicant may

mention any of the purposes for which he proposes to use the place of public resort and the licensing authority will have to examine whether there is any objection to the purpose proposed. The Act. was made in the year 1888 and the value of life have changed vastly even since then. So, it is difficult and even impossible to enumerate in detail the purpose for which licences could be applied. As and when the occasion arises the Government may indicate certain purposes for which licences may be granted and also delete some of them on a later occasion. This exactly what has happened in this particular case. The Act. merely provides for licence for use of a building for public resort or entertainment. What particular type or types of amusement or entertainment can be had in a particular place will have to depend on the applicant's choice and the authority's satisfaction that there is no objection to the purpose pointed out by the applicant. So much so, there is no list of the purposes in the Act. For the same reason the rules made under the Act. do not contain any purposes for which licences could be granted. They take care only to lay down the conditions under which licences could be issued. Thus what exactly are the purposes for which licences could be granted is not a matter covered by the Act. or the rules. It must, therefore, follow that the executive authority can issue directions in regard to the purpose in exercise of its power under Article. 162.

23. Even so learned counsel contends that the power cannot impose unreasonable restrictions on the fundamental rights of trade which is guaranteed to the petitioner under Article. 19 of the Constitution. In his submission, to direct that certain games should not be played in an amusement park is an unreasonable restriction. This argument is not valid for more than one reason. In the first place the petitioner is precluded from invoking Article. 19 to his aid because the President has suspended the operation of that article during the present emergency. So, the petitioner cannot rest his present claim on Article. 19 vide *The State of Orissa Vs. Khageswar Das and Others*, . Secondly even supposing for argument's sake the petitioner can seek protection under Article. 19, clause. (6) thereof enables the State to make any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by sub-clause (g) of Article. 19(1). The same sub-clause also says that what is contained in sub-clause (g) of Article. 19(1) does not affect the operation of any existing law in so far as it imposes reasonable restrictions on the exercise of that right in the interests of the general public. Now the apprehension expressed by the Government in the later G. O. of 1958 is that though the games like darts, which are played in such amusement parks, are games of skill in technique but the manner in which they are actually played makes them games of chance. In order to prevent the general public from falling a prey to this gambling practice, they have imposed the restriction that games of darts in the manner in which they are played in the place of public resort should not be allowed. This restriction is certainly conceived in the interests of the general public, of which we entertain no doubt. Therefore, it is a reasonable restriction within the meaning of clause. (6) of Article. 19.

24. Sri Suryanarayana has invited our attention to *R.M.D. Chamarbaugwalla Vs. The Union of India (UOI)*, . The Supreme Court was considering there the legality of the restrictions on prizes competitions. Venkatarama Ayyar, J., who spoke for the Court, observed that even assuming that the Prize Competitions Act. of 1955 applied to Prize competitions which involved substantial skill, they were business activities the protection of which is guaranteed by Article. 19(1)(g). The restrictions imposed by Sections 4 and 5 of the Act. and rules 11 and 12 framed u/s 20 in respect of such competitions are not reasonable restrictions enacted in the public interest and as such are not saved by Article. 19(6). At the same time, the learned Judge pointed out that trade and commerce protected by Article. 19(1)(g) and Article. 301 are only those activities which could be regarded as lawful trading activities. As gambling is not trade but Respondents Extra Commercium it does not fall within the purview of those articles. Therefore, the question whether the restrictions imposed by Sections 4 and 5 of the Act. and Rules 11 and 12 are reasonable or not and are in the interests of the public within the meaning of Article. 19(6) did not arise for consideration. Therefore, the test is whether the games of darts and shooting galleries are games of skill or games of chance. On a general review of these games as they were being played in such places of public resort, the Government opined that they were being played as games of chance and it was for that reason they said that those games should not be allowed in such places. This decision of the Government was based on the reports it received and the observation it made as could be seen from the G. O. of 1958. In these circumstances, the Government is fully justified in imposing those restrictions and in directing that these games should not be permitted. We, therefore, do not agree that this case comes within the principle laid down in *R. M. D. Chamarbaugwalla v. Union of India (supra)*.

25. Even then, it is the argument of learned counsel that such restriction cannot be imposed by administrative instructions when they relate to right to trade. They can be imposed by the Government only when such power has been delegated by the legislature. Two decisions are relied on in support of this proposition. In *Mohammad Yasin Vs. The Town Area Committee, Jalalabad* and *Another*, , the Court was considering the validity of the bye-laws made under the U. P. Municipalities Act. The bye-laws impose a charge on the wholesale dealer in the shape of a prescribed fee irrespective of any use or occupation by him of immovable property vested in or entrusted to the management of the Town Area Committee including any public street. They are held to be ultra vires the powers of the Committee and therefore could not be said to constitute a valid law which alone may, under Article. 19(6) of the Constitution, impose a restriction on the right conferred under Article. 19(1)(g). The Court also observed that in the absence of any valid law authorising it, such illegal imposition must undoubtedly operate as an illegal restraint. Our attention is also invited to the language of Article. 19(6) which speaks of only about law imposing certain restrictions in the interests of the general public. So, Sri Suryanarayana points out that only through law any reasonable restrictions can be imposed. As we have pointed out,

the games of darts and shooting galleries, as they are played in the places of public resort, are games of chance and partake of the nature of gambling. Then the question of the restrictions being reasonable or not and whether they are imposed by the law made by the legislature does not arise. In the present case, these games are precluded from being played on the ground that they are played as games of chance. So, this contention which has been raised by the learned counsel is altogether out of place.

26. Likewise the decision reported in *Vino Chemical and Pharmaceutical Works v. State*, AIR 1956 Nag 1, relied on by the petitioner's learned counsel will not help his contention.

27. All the same Sri Suryanarayana refers to Section 7 of the Act. and contends that the section requires that the purposes for which licences may be given or refused shall be stated in the rules. As we have already mentioned Section 7 refers to granting of licences. It says that if the authority is satisfied that the enclosed place may be safely used for the purpose of public resort and that no objection arising from its situation ownership or the purpose proposed exists it shall give a licence in writing, specifying among other things, the purpose for which it is to be used. Then the following sentence occurs in Section 7.

"Such licence shall be in such form and subject to such fee and conditions as the State Government may from time to time by rule direct."

28. Learned counsel spells out that this requires the State Government to make rules not only in regard to the form and fee but also purpose for which licences shall be granted. Section 14 empowers the State Government to make rules for carrying out the purposes of the Act. The sentence extracted from Section 7 and relied on by the learned counsel does not say that rules shall be made in respect of the purpose proposed in the place of public resort. It speaks only about the form of the licence, the fee payable thereon and the conditions to which it shall be subjected. It is patent that conditions under which a place of public resort should be conducted are different from its purpose. Purposes of such places are entertainment's and games provided therein; conditions are the manner in which the building is constructed, the place is maintained facilities and amenities are arranged etc. A look at the rules made under the Act. would make clear the character of the conditions. They relate to the nature of the buildings, the amenities like water, drainage, spittoons etc., that should be provided therein, the permanent and temporary nature of the buildings and enclosures the fees that is chargeable, the material that should be used in constructing the buildings and in arranging the lightings, the times during which the licenced premises may be kept open etc. Lastly, in Rule 30 general power is given to the licensing authority to add such other conditions, not inconsistent with the rules, as the authority may deem desirable in the interests of the health of safety of the public. So the conditions postulated by Section 7 relate to health and safety etc., of the public and not the purposes or the objects for which a place of public resort is conducted. So, it is plain that the Government is obliged to make rules only in

regard to conditions in which such places are constructed and maintained and not in regard to the purposes. As we have mentioned earlier, it is not possible to enumerate all the purposes of such entertainment's. As time goes on more and more purposes may be conceived and the old ones may be dropped. It is for the applicant to choose his own purposes and for the licensing authority to see whether there is any objection to the proposed purposes. That is why in our opinion the Act. and the rules do not purport to give any list of the purposes. When that is left untouched, the Government can step in, in exercise of its executive power under Article. 162. Therefore, the contention that only through rules these purposes can be restricted must be rejected as untenable.

29. There is yet another argument advanced before us for the petitioner. Contravention of mere administrative instructions does not entitle any aggrieved person for seeking a writ under Article. 226. For this proposition reliance is placed on G.J. Fernandez Vs. State of Mysore and Others, . But what is laid down in that decision is that Article. 162 does not confer any powers on the State Government to frame rules and it only indicates the scope of the executive power of the State. These instructions are not statutory rules which are justiciable in certain circumstances. In order to demonstrate that such executive instructions have the force of statutory rules it must be shown that they have been issued either under the authority conferred on the State Government by some statute or by some provision of the Constitution providing therefor. We do not think that this decision helps the contention of the petitioner. What the District Magistrate said and did is that the licence issued is not in accordance with the instructions given by the Government. The Government in its executive power gave administrative instructions to its officers that licences should not be given for playing darts and having shooting galleries. This has been ignored by the Second respondent who is a subordinate to the Government and on whom these instructions were binding. When they were not observed while granting the licence, certainly the revisional authority can correct that error. In fact it was observed by Wanchoo, C. J. in the decision cited that the State, under its executive power can give administrative instructions to its servants how to act in certain circumstances. Then the servants are obliged to follow them. Since that was not followed, it was corrected u/s 12.

30. For the foregoing reasons, we cannot accept the first set of contentions put forward on behalf of the petitioner contained in points 1 to 4. We hold that the First respondent viz., the District Magistrate is fully justified in exercising his powers u/s 12 and finding that the licence issued was not in accordance with the instructions contained in the two G. Os. of 1939 and 1958.

31. Coming to the next set of contentions, the gravamen of the charge is that the principles of natural justice were violated in passing the order of revocation as it was passed on a ground which was not even mentioned in the show cause notice. The criticism in the behalf appears to be fully justified. In the show cause notice of 28th of April, 1974, issued by the District Magistrate the only objection

pointed out was that the grant of licence to conduct the performances like skill games viz., darts and shooting galleries was not in accordance with the instructions of the Government issued in G. O. Ms. No. 6574 dated 21-12-1939 as amended in G. O. Ms. No. 1951 dated 13-7-1958. In his explanation the petitioner sought to justify the granting of licence in respect of these two games also. In the final order of revocation dated 10-5-1974, the District Magistrate pointed out that the police conducted a raid on the park on 7-2-1974 i.e., even more than two months earlier than the show cause notice and booked some persons u/s 12 of the A. P. Gambling Act. for the offence of gaming and side betting. The District Magistrate was of the opinion that though a game is played under the guise of a skill game it depends upon the person who plays the game to convert it into a game of skill or chance, for when the amount of skill required is beyond the capacity of such person, the element of chance comes. It was pointed out that permitting these games was not in accordance with the two G. Os. of 1939 and 1958. Finally it was found that the petitioner, had been running games of chance viz., darts and shooting galleries by allowing side betting prohibited under law.

32. It is immediately seen that in regard to side betting the petitioner was not put on notice since the show cause notice did not make any mention of it and consequently he had no opportunity of meeting this allegation made against him and submitting his explanation. It is indeed curious why this aspect was not mentioned in the show cause notice, though the order shows that the police had conducted a raid on the park even more than two months prior to the issuance of the show cause notice. Further, the report of the Superintendent of Police, East Godavari dated 8-4-1974 was also read and in fact in the order, the information about the raid and other things as to what was found in the petitioner's amusement park was gathered by the District Magistrate only from this report. A copy of this report was not furnished to the petitioner and still in the order the District Magistrate relied on it. How could the petitioner be expected to meet the charges and allegations when he was not furnished with copies of the material on which reliance was placed by the District Magistrate. It is opposed to canons of natural justice. Similar view was taken by the Supreme Court in C. A. 837 of 1975, dated 29-9-1975 = (reported in City Corner Vs. Personal Assistant to Collector and Addl. District Magistrate, Nellore,) and a Division Bench of this Court in W. A. Nos. 640, 646 of 1973 and batch D/- 29-11-1973 (Andhra Pradesh). Thus the order of revocation is vitiated by violation of the principles of natural justice in two ways, firstly by not calling upon the petitioner to explain about the alleged side betting and secondly by not supplying him with a copy of the report of the Superintendent of Police, East Godavari dated 8-4-1974. Undoubtedly the revocation of the licence is based not only on the original licence not being in accordance with the two G. Os. but also on the ground of side betting. Reading from the operative portion of the order it is clear that the licence issued on 21-12-1973 and renewed on 11-3-1974 to run the amusement park at Pithapuram was revoked. If the finding about side betting was not there

it cannot be postulated how the District Magistrate would have passed his order. May be, he might have simply deleted from the licence the permission to play the games of darts and shooting galleries. But what happened now is, the original licence itself, as it has been renewed, was revoked on two grounds, one of which was not even given notice of to the petitioner. For this reason, the order of the First respondent dated 10-5-1974 is liable to be set aside.

33. Learned Government Pleader, however, argues relying on *Sawarn Singh and Another Vs. State of Punjab and Others*, , that since one of the grounds i.e., non-compliance with the G. Os. was certainly the basis of the show cause notice and it was also one of the grounds on which the licence was revoked the order of revocation must be upheld. As we have pointed out, we do not know what the licensing authority would have done had not allegation of side betting been before him. What the Supreme Court said in the aforesaid case is that where there are some relevant and existent grounds and others are irrelevant and non-existent, the order of the domestic tribunal can be sustained if the Court is satisfied that the authority, would have passed the order on the basis of the relevant and existing grounds, and the exclusion of irrelevant and non-existing grounds could not have effected the ultimate decision. Here it is impossible to say what the District Magistrate would have done had not the ground of side betting been before him. It is impossible to say that if that is excluded the ultimate decision of the District Magistrate would have been the same. Therefore, we have to set aside the order of revocation dated 10-5-1974 passed by the First respondent. However, we make it clear that it is open to the District Magistrate to consider the matter De Novo u/s 12 after giving due notice to the petitioner about all the allegations made against him, and also furnishing him with copies of the material which are sought to be relied on. It will be open to the District Magistrate to pass any order which he thinks just and proper in the circumstances of the case, after making such enquiry as he deems necessary, but after giving the petitioner due opportunity to represent his case. With this observation, we allow the Writ petition and set aside the order of revocation dated 10-5-1974, and the Second respondents consequential order dated 13-5-1974. In the circumstances of the case, we direct the parties to bear their own costs. Advocate's fee Rs. 200/-.

34. Petition allowed.