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BEFORE THE HONORABLE HIGH COURT OF KERALA AT ERNAKULAM

W.P.(C)No.

Of 2021

Pauly Vadakkan

: Petitioner

Vs

State of Kerala and Others

: Respondents

SYNOPSIS

Gambling through online platforms is now a growing menace in the state. These platforms endorsed by even celebrities including respondents 7 ,8 and 9 attract their audience with fake promises while in reality the probability of such winnings are slim to none, thus making a fool of unsuspecting people. At present the law governing gaming activities in the state of Kerala is the Kerala Gaming Act 1960. The Act do not bring within it purview any online gambling, wagering or betting activities. The act extends to gaming activities conducted in a " Common gaming house" (which is an enclosed physical premise such as house, room, tent etc) by using any " instrument of gaming "kept or used in such enclosed physical premises for the accrual of profit or gain to the person owning , occupying, keeping such instruments of gaming in the enclosed physical premises. Thus a person sitting in his private house, using these online gambling platforms from his house arguably may not come within the definition of a common gaming house". Therefore such online gambling, betting, or wagering activities would not come under the Kerala Gaming Act. Using these loopholes in law

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many online platforms flourish freely by conducting online gambling, wagering and betting activities. Various High Courts, particularly the Hon'ble High Courts of Gujarath and Tamil Nadu have directed their respective jurisdictional state legislatures to explore the possibilities regulating the regime. In Andhrapradesh an ordinance has been promulgated to bring the online gambling activities within the purview of the existing gaming legislation. Thus there is a felt need to ban or to regulate and monitor the online gambling games by framing laws that includes within it purview games that are conducted online by using electronic gadgets including mobile phone , computers, laptops and other communication devices. Hence this writ petition.

CHRONOLOGICAL EVENTS

03-1-2021 -Report published by the New Indian Express online

Dated this 13th day of January 2021

JOMY.K .JOSE
Counsel for the Petitioner

BEFORE THE HONORABLEBLE HIGH COURT OF KERALA AT
ERNAKULAM

W.P. (C) No. Of 2021

PETITIONER:

Pauly Vadakkan, aged 50 years, S/o Joseph Vadakkan,
"Vadakkan House", Annamanada P.O,
Thrissur District, Kerala -680741

Vs

RESPONDENTS:

1. State of Kerala
Rep. by its Chief Secretary to the Government
Government Secretariat, Thiruvananthapuram-695001
2. Secretary to the Government
Information Technology Department, Government of Kerala
Secretariat , Thiruvananthapuram 695001
3. The Kerala state Police chief
Vazhuthacaud , Thiruvananthapuram-695014
4. The Telecom Regulatory Authority Of India(TRAI)
Mahanagar Door Sanchar Bhavan
Jawaharlal Nehru Marg
Old Minto Road
New Delhi -110 002
5. Play games 24*7 private limited
401, 4th floor, Building No 16,Wing-B ,Interface
Complex,Link Road, Malad,Mumbai, Maharashtra-400067
Represented by its Senior Vice President
6. Mobile Premier League
Galactus Funware Technology Limited
Represented by its Director
Om Sakti Heritage Rd, Green Glen Layout, Bellandur, Bengaluru,
Karnataka 560103.

7. Virat Kohli(Cricketer)
DLF-City Phase 1
Uttam Nagar
West Delhi , Delhi 110059
8. Aju Varghese
Puthuparambil House
Thirunilath Road
Cochin University P.O
Kalamassery, Ernakulam- 682022
9. Tamannaah Bhatia, D/o Santhos,
Shop No: 72/74, Building No : 70,
Kansara Chawl,Kalbadevi Road, Mumbai,
Maharastra – 400 002

Address for services of all notices and processes to the petitioners are that of their counsels **JOMY.K.JOSE** Advocates, Kochi – 18.

Address for services of all notices and processes to the respondents are as shown above

WRIT PETITION SUBMITTED UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA

STATEMENTS OF FACTS

1. The social impact of gambling is a severe menace to the society as the Saint Thiruvalluvar in 934th and 939th couplet of Thirukkural described the evils of gambling as follows:

"There is nothing else that brings poverty like gambling which causes many a misery and destroys one's reputation.

"Gambling would preclude the Five Rathnas, viz., Reputation, Education, Wealth, Food and Cloth, from reaching the person."

2. The Petitioner is a citizen of India and he is permanently residing at the above shown address. The petitioner is a public spirited person and is a renowned film director. The petitioner is exploring the cause of ban on online gambling for the entire population of Kerala.

3. It is submitted that pre independent statutes prohibited any game based on chance or probability except lotteries. With the enforcement of the Constitution of India, entry 34 of list II of 7th schedule of the constitution empowers the state governments to legislate on matters concerning gambling and betting. Since there is no central uniform legislation on the subject the state under entry 34 of list II of the 7th schedule of the constitution have enacted legislation for prevention of gambling. The Public Gambling Act, 1867 has been adopted by several states and some other states have enacted their own legislation to regulate gaming /gambling activities within its territory.

4. It is submitted that the State of Kerala enacted The Kerala Gaming Act in the year 1960. The act defines 'common gaming house', "gaming" and "instrument of gaming" under section 2. It states that

a) *"common gaming house" means any house, room,*

tent, enclosure, vehicle, vessel. Or any place whatsoever in which cards, dice, tables or other instruments of gaming are kept or used for the profit or gain of the person owning, occupying, using or keeping such house, room, tent, enclosure, vehicle, vessel or place whether by way of charge for the use of instruments of gaming or of the house, room, tent, enclosure, vehicle, vessel, or place or otherwise howsoever; and includes any house, room, tent, enclosure, vehicle, vessel, or place opened, kept or used or permitted to be opened, kept or used for the purpose of gaming ;

b) **"gaming "** *does not include a lottery but includes wagering or betting. Explanation – for the purpose of this definition , wagering or betting shall be deemed to compresses the collection or soliciting of bets , the receipt or distribution of winnings or prizes, in money or otherwise, in respect of any wager or bet, or any act which is intended to aid or facilitate , wagering or betting or such collection, soliciting, receipt or distribution:*

c) *"Instruments of gaming" include any article used or intended to be used as subject or means of /or for the purpose of carrying on or facilitating or in connection with -gaming any books, lists, tickets, forms or other documents used or intended to be used as a register or recorded or evidence of 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 .*

5. Further section 3 prescribes penalty for opening etc. any enclosure etc., for certain forms of gaming section 7, states the penalty for opening etc, a common gaming house. Section 4,8 and 9 of the act prescribes penalty for being found in a gaming house, for being found gaming in a common gaming house and for refusing to give a name and address and for giving false name and address respectively. The class of games for which the act do not apply are stipulated under section14 which states that nothing in the forgoing provisions of this act shall be held to apply to any game of mere skill wherever paid. Further section 19 confer on any police officer, not below the rank of a sub Inspector of police, the power to arrest without a warrant, any person committing in his view any offence made punishable by this act. However the legislation specifically lacks in regulating online gaming or prevention of online gambling , wagering or betting. These gambling legislation were enacted prior to the advent of virtual / online gambling and therefore primarily refer to gambling activities taking place in physical premises, defined as " gaming or common gaming houses".

6. It is submitted on an analysis of provisions of Kerala Gaming Act , 1960 it can be seen that the Act do not bring within its purview any online gambling , wagering or betting games. Under the Kerala Gaming Act , 1960, to qualify as a " common gaming house" there should be (a) an enclosed physical premise such as a house, room, tent, enclosure, vehicle,

vessel (b) "instruments of gaming " kept or used in such enclosed physical premises for the purpose of approval of profit or game to the person owning, occupying, keeping such instrument of gaming in the enclosed physical premises. (c) Profit or gain by way of charge or use of the same enclosed premises or " instruments of gaming" or otherwise. Thus the intention of the legislation is to impose restrictions on the use of a physically enclosed premises for the purpose of making "profit or gain" from the use of such premises from gambling. Thus a person sitting in his private home, accessing online gambling website from his house arguably may not come within the definition of a "Common gambling house". Therefore the Kerala Gaming Act 1960 cannot be stretched to include the concept of online gambling, betting or wagering games. The most common forms of gambling in India from time immemorial, are the many versions of card game like Teenpatti ,Poker, Rummy and Bridge, as well as sports betting. With the dawn of technology these gaming effectively extended their reach and popularity via the digital medium. Most popular online gambling sites in India are card game sites hosting Rummy and Poker tournaments. Rummy circle run by the 5th respondent is one among many of the popular online gaming application. With the advent of Covid -19 pandemic and consequent lockdown the people especially the members of youth and teenagers have fallen into the trap of these online gambling sites. But when out gambling legislations are read in the context of online and digital gambling the interpretation and applicability get complex. The law governing

the field is inadequate to handle the grave situation arising out of online gambling games .

7. Further it is humbly submitted that the Law Commission in the 2018 report , observed that the Public Gambling Act 1867, was an absolute law in need of immediate repeal. Most of the state enactments including the Kerala Gaming Act 1960 are based on the provisions of the Public Gambling Act. Thus it is construed that the Law commission acknowledged the need to repeal the outdated gaming legislation and the need for a new legislation suitable for the present time.

8. The online gambling games are conducted by using electronic gadgets such as computer, computer network, computer resource, computer system and communication device for gaming purpose, thus make these games depend on "Chance" rather than application of "Skill". Online rummy platforms are a growing menace in the state. These platform attract their audience with false promises (like win Rs 25,000/- daily). While in reality probability of such winnings are slim to none . These days even celebrities like respondent 6 and 7 are seen endorsing/promoting such platforms , thus attracting unsuspecting people towards it. Primary targets will be middle to low income group people who will be enticed to make easy money. But people who fall to the fraud platforms very often use

what is left to their life savings. There have been many reported cases across the state in which people have got scammed . A man aged 28 years hailing from Kattakkada in Thiruvananthapuram District who was an employee of ISRO allegedly committed suicide. He has fallen in the trap of online rummy game and pushed himself to a debt of Rs.21 lakhs. Finding no means to repay the debt he committed suicide. A true copy of the report published by the New Indian Express online dated 03-1-2021 is produced herewith and marked as **Exhibit P1.** Similarly many people from different parts of the state have lost lakhs of rupees in the online gambling game. But very often such cases won't get registered because once a case is filed the victim will also get prosecuted under the law.

9. It is submitted that the 7th respondent alone has more than 152 million followers in different social media platforms combined. The 7th respondent is one among the most influential persons among the youth and all other sections of the society. Respondents 8 and 9 are cine artists in Kerala. The popularity of the respondents 7, 8 and 9 on youth and other sections of the society are used for promoting online gambling and thereby accumulate huge amount by cheating. A true copy of the advertisements in which respondents 7, 8 and 9 appears is produced herewith and marked as **Exhibit P2.**

10. Indian states such as Telungana, Odissa and Assam have banned the playing of online rummy in that states. The Hon'ble Madras HC in the case of **D.Siluvai Venanee Vs. Stae of Tamilnadu**: 2020(3)MLJ(col)710 has drawn the state governments attention to the lack of a regulatory framework and absence of laws to monitor and online games .

11. A division bench of the Hon'ble Gujrath High court the case of **Amit M. Nair Vs State of Gujarath** R/Writ petition(PIL)No: 146 of 2020 has directed the State of Gujarath to

I) We direct the State of Gujarat to consider this writ application as arepresentation. If the online games involve gambling and if they are being played in the State of Gujarat, then it is expected of the State to deal with the same appropriately as gaming is a subject matter of List II of the Schedule VII of the Constitution of India.

II) If any website is operating in the State of Gujarat or is engaged in any gambling games, the State shall deal with the same in accordance with law, rules, regulations and the policy, as may be applicable.

III) The State shall also examine whether such games result in money laundering or violation of laws relating to foreign exchange as well.

IV) We expect the State Government to promptly look into the aforesaid issues and take an appropriate decision in accordance with law in larger public interest before it is too late.

12. It is humbly submitted that on 23rd September 2020 the Hon'ble government of Andhra Pradesh promulgated the Andhra Pradesh Gaming (Amendment) Ordinance 2020 amending the Andhrapradesh Gaming act 1974. The ordinance has made significant amendment to the Andhra Pradesh Gaming Act and has extended its application to online gaming activity. The ordinance prohibit all forms of real money gaming from being conducted in the state of Andhra Pradesh with immediate effect.

The ordinance has made the following key changes to the Andhra Pradesh gaming act.

- (a) Prior to the ordinance, the AP Gaming act prohibited any person from opening , keeping or using or allowing to use a " Common gaming House" (which covered only physical premises like house, tent, enclosure, rooms, vehicles, vessels etc where " instruments of gaming" are kept or used. Pursuant to the amendment, cyber space is now specifically included within a scope of a common gaming house.
- (b) " instruments of gaming " , which include physical items such as cards, dice, gaming tables etc now specifically covers any articles that can be used for virtual or intangible including electronic modes of "gaming". Electrons and digital records

that are used as registers or records or evidence of "gaming": proceeds of any" Gaming" including any online transfer of funds or transactions are now specifically covered in the defining of gaming.

- (c) Online gaming for winning money or any other stakes is now included in the definition of "gaming". Wagering or betting now specifically includes any act of risking of money or playing stakes or otherwise on the result of game or an event including on a " game Of skill".
- (d) The savings an exception for " games of skill from the provisions of the AP gaming Act has now been entirely done away with. Rather, the AP Gaming Act now supersedes anything inconsistent with any other law in force. Earlier, the provisions of the AP gaming Act did not apply to a "game of skills and only paying " Game of chance" for real money was prohibited.

13. Thus , there is felt need for regulating online gambling and most of the states are moving towards it by either bringing new legislation or amending the old gaming legislations. The Kerala Gaming Act , 1960 is incapable in regulating the online gambling games. As it do not include any provisions that encompass the games that are conducted in online mode through the use of Electronic devices. The petitioner has filed the present petition in public interest the

petitioner does not stand to derive any personal advantage or benefit, except that it serves the larger common good. Regulation of online gambling games is the only way to protect the unsuspecting members of our society from falling prey to the games.

14. The petitioner has invoked the original writ jurisdiction of this Hon'ble court. The petitioner also submits that he has not initiated any other proceedings on the same cause of action either before any authority, court or tribunal. Hence the petitioner is filing this petition on the grounds specifically set out hereafter, each of which is independent and without prejudice to one another on the following among other :

Grounds

A. Online gambling games are a growing menace in the state. These platforms that are even endorsed by celebrities attract their audience with false promise, easily making a fool of unsuspecting people. Primary targets will be middle to low income people who are enticed to make easy money. People fall prey to these fraud platforms only to lose what is left of their life's savings. There have been reports of such scams from across the state. A 29 year old man hailing from Trivandrum, who fell a prey to these online gambling, pushed himself to debt of Rs.22 lakhs and allegedly committed suicide. There are similar cases reported from different

districts of the State where people have lost lakhs of rupees in such online games.

B. The law related to gaming in Kerala is mainly dealt under the Kerala gaming act 1960. However the act do not extend its power to any gambling, wagering or betting games conducted through online platforms by using electronic and communication devices. The idea of "Games" as envisaged under the act exclusively includes those games that are conducted in a "common gaming house " by using " instruments for gaming" for the purpose of accrual of profit of gain to the person owning, occupying, Keeping such instruments of gaming in the enclosed physical premise. Thus there is always an element of physical premise or present in it. Therefore the online gambling games do not come under this legislation. Rather when the gambling legislations are read in the context of online and digital gambling, the interpretation and applicability got complex. Online gambling platforms are engaged in illegal activities and they remain unchecked owing to deficiencies in the legal infrastructure. The 7th respondent is a cricketer and the 8th and 9th respondents are cine artists. They are promoting and endorsing online gambling. They are using their fame to promote online gambling and are harvesting money from online gambling business. The respondents 7, 8 and 9 they hook innocent vulnerable youngsters to play online gambling games. The advertisements encouraging online gambling in

which respondents 7 , 8 and 9 appears is a clear example of promotion of illegality. Therefore the interference of this honorable court is warranted.

C. Various High courts, particularly the Hon'ble High court of Gujarath and Tamil Nadu have directed their respective jurisdiction states legislature to explore the possibilities of regulating the regime. In the state of Andhra Pradesh gaming (amendment) ordinance , 2020 on 23rd September 2020. The ordinance had made significant amendments to the AP Gaming Act and has extended its application to online gaming activities . Pursuant to the ordinance, cyber space is now specifically included within the scope of "Common gaming House" as envisaged under gaming legislations. And the term " Instruments of gaming" now includes any article that can be used for virtual or intangible including electronic modes of gaming. Thus encompassing the concept of "online gambling games within the purview of the gaming legislation.

D. The incapability of the present gaming legislations in the state to include games conducted through online mode has been used by the online gambling platform. Many members of the ordinary laymen of the society have faller a prey to these platforms, and many more continue to do so even now. So there is a felt need to bring out loss that can regulate online gambling, betting or wagering games. The state cannot be compelled by a judicial pronouncement to make a legislation.

However the writ courts have ample power to direct the state to regulate and monitor the activities impacting the social and economic health of the society , particularly in pandemic situation.

In view of the facts mentioned above, the Petitioners humbly pray that this Hon'ble court may be pleased:

PRAYER

- I) Declare that playing online gambling and online betting in Virtual Space, Cyber Space, through Mobile Applications as well as through Computers more particularly "online rummy" to be unlawful and illegal.

- II) Issue a Writ of Mandamus or any other Writ or Order or Direction to the Respondents No.1 State of Kerala to ban all forms of Online Gambling and Online Betting of any nature until and unless an appropriate regulatory regime is established and regulations are framed by the 1st Respondent regulating the functions and activities of all forms of Online Gambling and Online Betting.

- III) To grant such other reliefs as may be prayed for at the time of hearing and the court may deem fit.

- (IV) To grant Costs of this Writ petition.

Interim relief prayed for :

Pending final adjudication of the present petition on merits, this Hon'ble Court may be pleased to Issue Direction to the 1st Respondent State of Kerala to ban all forms of Online Gambling and Online Betting of any nature unless until an appropriate regulatory regime is established and regulations are framed by Respondent regulating the functions and activities of all forms of Online Gambling and Online Betting.

Dated this 12th day of January 2021

Petitioner

Jomy K Jose

Counsel for the Petitioner

