

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)**

WRIT PETITION NO. 5726 of 2013

IN THE MATTER OF:

An application under Article 102 of the Constitution of the People's Republic of Bangladesh.

And

IN THE MATTER OF:

Md. Jafar Ullah

.....Petitioner

Versus

The People's Republic of Bangladesh represented by the Secretary, Ministry of Home Affairs, Bangladesh Secretariat, Dhaka and others.

.....Respondents

Mr. Momtazuddin Ahmed Mehedi with

Mr. Shahab uddin Ahammad, Advocate

.....For the petitioner

Mr. Md. Motahar Hossain, DAG with

Mr. Samarendra Nath Biswas, AAG

Ms. Purabi Rani Sharma, AAG

.....For the Respondents

Heard and Judgment on: 18.6.2014

Present:

Mr. Justice M. Moazzam Husain

And

Mr. Justice Md. Badruzzaman

M. Moazzam Husain, J

This rule *nisi* was issued asking the respondents to show cause as to why a direction shall not be given to them not to interfere with the indoor games, namely, *Nipun Khela* 1-10, 1-8, Charchari, Dice, Howji and cultural

programs conducted by the petitioner at Bangladesh Muktijodhya Welfare Club, Noagaon Branch premises, Noagaon, without due process of law.

The case of the petitioner, in brief, is that he is the Area Chief of Noagaon Muktijodhya Welfare Club, a local branch of the Bangladesh Muktijodhya Welfare Club. On 01.6.2013 he entered into a lease- agreement with Bangladesh Muktijodhya Welfare Club under which the Welfare Club has given him permission to conduct indoor games including *Nipun Khela* ie, 1-10, 1-8, *Charchari*, Dice, Howji and cultural programs in the premises of the Noagaon Muktijodhya Welfare Club, at Noagaon. As per terms of the agreement the petitioner is permitted, amongst others, to organize and conduct indoor games which includes 1-10, 1-8, *Charchari*, Dice, Howji *Khela* and cultural programs.

Further case of the petitioner is that the agreement gives him lawful authority to conduct his business of those games in the specified premises of the Club initially for five years renewable from time to time. His business is absolutely lawful and the law enforcing agencies have no right to disturb or interfere with his business. But he could not conduct the lawful business as the local police were frequently interfering with his business. Interference into a lawful business of any person is illegal. Therefore, the respondents need be directed not to interfere with the petitioner's lawful business.

Respondent No.1, through the Ministry of Home, contested the Rule by filing affidavit-in-opposition. The contesting Respondent has raised a number of contentions which by a close reading boil down to two propositions relevant for disposal of this Rule. First, *Nipun Khela* which includes 1-10, 1-8, *Charchari*, Dice, Howji and the like are gambling

punishable under the Public Gambling Act, 1867 as well as under the Penal Code. Secondly, Bangladesh Mutijodhya Welfare Club or any other body or organization has no authority to permit by contract or otherwise any person or body to offer such games to be played by members of general public or to keep any common gaming-house for such games. The lease agreement seeking to authorize illegal acts is itself illegal and the Welfare Club has exceeded its jurisdiction in executing the agreement. The agreement being illegal on the face of it the petitioner cannot claim immunity from action against him if he is found to be engaged in activities punishable under law.

Mr. Momtaz Uddin Mehdi, learned Advocate appearing for the petitioner submits that the games indicated in the petition are mere games of innocent recreation and amusement which have nothing to do with gambling as contemplated in the Public Gambling Act. His further contention is, if such games are stopped or prohibited rural youth will be diverted to anti-social activities creating law and order problem. Mr. Mehdi, however, did not say anything about the competence of the Muktijodhya Welfare Club or for that matter any other club or organization in permitting any person to be involved in indoor games coming within the meaning of gambling.

Mr. Motahar Hossain, learned DAG, on the other hand submits that the games organized and offered by the petitioner to be played in his club premises are pure and simple gambling punishable under Section 3 and 4 of the Public Gambling Act, 1867. Since there is element of lottery in the games they are also punishable under Section 294A of the Penal Code. He referred to a circular dated 13.10.1998 issued by the Government asking the local administration to take steps against lottery offered by various

trading houses for promotion of their business in the form of lucky-coupon, lucky draw, prizes etc. He contended that since the Nipun Khela, 1-10, 1-8, Dice, Howji sought to be conducted by the petitioner and keeping common gaming-house for the purpose are punishable under law the Muktijodhya Welfare Club or any other person or organization has no authority to enter upon contract for indulging in such games. Despite the restrictions imposed by law, he insisted, a class of persons is engaged in making money holding regular sessions of the games in different places of the country and thereby destroying our youth. He finally submits that the petition is not maintainable as is brought on an agreement which is void *ab initio* and the games sought to be played are offences punishable under law.

Here in this case one Zafar Ullah of Arambag, Dhaka, posing himself to be Area Chief of Noagaon District Branch of Bangladesh Muktijodhya Welfare Club, came up with this writ petition seeking direction against the respondents not to interfere with his business comprising of *Nipun Khela* which, according to him, includes 1-10, 1-8, Charchari, Dice, Howji and also cultural programs at Noagaon Branch premises of the Club. He claims the games to be lawful and not anyway prohibited by law. His specific case is that the respondents, more specifically, the police do not have any authority to enter upon his premises and interfere with his lawful business which they often are doing. He obtained the Rule on the established principles of law that-‘All that is not prohibited by law is legal’.

Over the years series of similar writ petitions were filed by different persons praying for similar directions. Rules were issued almost in all cases. Notices were routinely served upon all the Respondents. They did not appear to be very particular about disposal of the Rule. At long last the

Respondents have appeared with a robust defense assailing the legal status of the games especially by reference to specific pieces of legislations, namely, The Public Gambling Act, 1867; The Penal Code; The Places of Public Amusement Act, 1933 and the National Sports Council Act, 1974.

We examined the legislations now in place regulating sports, amusements and games. The Public Gambling Act, 1867 as amended up to January, 2007 appear to be most relevant in the present context. The Public Gambling Act was enacted for punishment of public gambling and the keeping of 'common gaming houses'. The Act does not, however, define gambling. In section 1A the Act 'gaming' is defined as follows:

1A. "gaming" includes wagering or betting except, wagering or betting upon a horse-race, when such wagering or betting takes place-
(a) on the day of which such race is to be run,
(b) in an enclosure which the Stewards controlling such race have, with the sanction of the Government, set apart for the purpose, and
(c) (i) with a licensed bookmaker, or
(ii) by means of a totalisator as defined in section 14 of the Amusement Tax Act, 1922.
but does not include a lottery.

The same section defines 'common gaming-house' as follows:

"common gaming-house" means any house, room, tent, or walled enclosure, or space or vehicle, or any place whatsoever, in which any instrument of gaming are kept or used for the profit or gain of the person owning occupying, using or keeping such house, room, tent, enclosure, space, vehicle or place, whether by way of charge for the use of such house, room, tent, enclosure, space, vehicle, place, or instruments or otherwise howsoever."

Sections 3 and 4 of the Act make several acts punishable. Under Section 3 the following acts are made punishable:

- a) opening, keeping or using common gaming-house;

- b) being owner or occupier of common gaming-house willfully permitting the same to be opened, occupied, used or kept by any other person;
- c) having been in care or management of or being engaged to assist the conducting of the business of any house, tent, room, space or walled enclosure, opened, occupied, used or kept for the purpose as aforesaid, and
- d) advancing or furnishing money for the purpose of gaming with persons frequenting such house, tent, room, space or walled enclosure.

Section 4 of the Act makes the following acts punishable:

- a) playing or gaming with cards, dice, counters, money or other instruments of gaming in the common gaming-house, and
- b) being found present in the common gaming-house for the purpose of gaming, no matter playing for money, wager, stake or otherwise.

A plain reading of the long title of the Act suggests that the Act itself was intended to make provisions for punishment for 'public gambling' and the keeping of 'common gaming-houses'. As of common knowledge, gambling or betting is the wagering of money, stakes, or something of material value on an event with an uncertain outcome with the primary intention of winning additional money. According to Black's Law Dictionary (Eighth Edition) 'gambling' means- "The act of risking something of value, esp. money for a chance to win a prize". As mentioned earlier, definition of gambling does not appear in the Public Gambling Act. But the definition of 'gaming' appearing in Section 2 of the Act is said to 'include wagering or betting'. Back on Black's Law Dictionary, "wager" means- 'money or other consideration risked on uncertain event and "bet" means 'something (esp. money) staked or pledged as a wager. It follows, therefore, that 'gaming' as defined in the Act is absolutely synonymous with gambling.

‘Lottery’ also is a kind of gambling which involves the drawing of lots for a prize. Save as otherwise authorized by the Government or the State lottery, keeping any office or place for the purpose of drawing any lottery is punishable under the Penal Code.

Section 294A of the Penal Code makes lottery punishable in the following terms:

294A. Whoever keeps any office or place for the purpose of drawing any lottery [not being a State lottery or a lottery authorized by the Government, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine or with both.

Reverting to the case, it appears that the petitioner keeps a ‘common gaming-house’ at his club premises for offering games called *Nipun Khela* ie, 1-10, 1-8, *Charchari*, dice and *Howji* to be played by the members of general public. He makes no secret that it is his business and the games are a means of generating money. In view of the legal position we have no doubt that Dice and *Howji* are gambling in that those games are commonly known as games played risking money with intention to win more money. The games played as 1-10, 1-8 and *Charchari* are a bit obscure. There is no description of them given by the petitioner either. Learned DAG submitted with emphasis that all of them are gambling directly related to wagering and betting with intention to win additional money. Mr. Mehdi found it difficult to oppose the contention and say otherwise. The case of alleged lawful business canvassed by the petitioner itself lends colour to the claim that all those games are played for money, wager or stake generating profit for the petitioner as keeper of the house which means by necessary

implication that those are nothing but varied forms of gambling sought to be prevented by the Public Gambling Act, 1876.

The second limb of the petitioner's case is that he derived authority from the Muktijodhya Welfare Club to conduct those games in the premises of the Naogaon branch of the Club. The contract executed by the Bangladesh Muktijodhya Welfare Club suggests, amongst others, that the petitioner is given lease of the premises of the Naogaon branch of the Club for a initial period of five years to build up necessary infrastructures and organize and conduct the purported lawful games, namely, *Nipun Khela*, 1-10, 1-8, Dice, Howji and cultural programs for gain on different conditions. The petitioner, although professedly the Naogaon Area Chief of the Club, figures as lessee in the contract and is allowed to conduct the games on commercial basis. Terms of contract requires him, amongst others, to pay Tk. 100000/- as deposit at the first instance. Monthly rental was to be fixed after the games boomed. More importantly, the contract authorizes the petitioner to build up a permanent structures for housing the games at the premises of Naogaon branch of Muktijodhya Welfare Club which necessarily means that permission is given to keep 'common gaming-house' which is an offence and punishable under the Public Gambling Act. Needless to say that the contract being made for an unlawful purpose is *void ab initio and is unenforceable*.

So far as the places of cultural programs are concerned, they are controlled and regulated by the Places of Public Amusement Act, 1933. If the program is for public amusement it needs be held in the "place of public amusement" as defined under Section 2 of the of the Act and the place

needs be notified as such by the Government and no person can open or keep open places of public amusement without, or otherwise than in conformity within the condition of, a license to be granted by the Deputy Commissioner. Under the Places of Public Amusement Act 'keeping open a notified place of public amusement unlawfully' and 'contravention of the order closing any notified place of public amusement' are punishable. Cultural programs for public amusement, therefore, fall within a different statutory regime not to be organized at will in disregard to law.

The National Sports Council act, 1974, referred to by the learned DAG is all about constitution of a council for the development and regulation of sports and co-ordination of sports activities. The Act defines sports as meaning game for recreation involving bodily exercises including games declared by the Government to be sports within the meaning of the Act. This Act was enacted repealing the earlier Sports (Development and Control) Ordinance 1962, to regulate and co-ordinate the games involving bodily exercises having nothing to do with gambling within the meaning of the Public Gambling Act, or cultural programs for public amusement within the meaning of the Places of Public Amusement Act. 1933.

We have already held that the indoor games sought to be conducted as 'Nipun Khela' including 1-10, 1-8, Dice and Howji are 'gambling' and whoever playing or found present in the common gaming-house for the purpose of playing the same as well as owning or keeping 'common gaming-house' are punishable under law. The appropriate authorities as indicated in the Public Gambling Act are duty bound to take action against the persons and/or organizations found committing offences under the Act.

The petitioner does have no valid basis to seek direction against the Respondents not to interfere with the acts punishable under penal statutes.

Before we conclude we feel it expedient to sum up our findings as follows:

- a) any game that is played for money, wager or stake or in other words played risking money or something of value for a chance to win a prize is gambling.
- b) the *Nupun Khela* including 1-10, 1-8, Dice and Howji are varied forms gambling. The words 'gambling' and 'gaming' appearing in the Public Gambling Act, 1867, are synonymous by connotation. Whoever found present in the 'common gaming-house' for the purpose of gaming, no matter playing for money, wager, stake or otherwise, is punishable under the said Act.
- c) owning, keeping or having charge of common gaming-house as contemplated under Section 3 of the Public Gambling Act, 1867, is an offence and punishable under the said section of law.
- d) 'Lottery' is a form of gambling punishable under Section 294A of the Penal Code with exceptions provided therein.
- e) the Magistrate of a district or other officer invested with full power of a Magistrate or the District Superintendent of Police may either himself enter, or by his warrant authorize any competent police officer to enter into any such gaming house and take into custody all persons present therein and seize all instruments of gaming including moneys, securities for money, and articles of value used or intended to be used for the purpose of gaming as contemplated in section 6 of the Public Gambling Act, 1867.
- f) There is no scope for holding cultural programs for public amusement as sought to be done by the petitioner save as provided by the Places of Public Amusement Act 1933. There must be 'notified places of public amusement' as *per* requirement of the Act for the purpose of such programs.
- g) in the peculiar factual and legal background the writ petition is misconceived and not maintainable.

h) action or drive by police and other agencies competent so to take, against acts prohibited and punishable under law are taken as a matter of course and of duty under law. Law does not permit interference into agency- actions against crimes and anti-social activities unless it is shown that the activity sought to be prevented, inquired into or investigated by agencies are not prohibited by law or that the agency action is tainted with bad faith and apparent malice.

In the background, it seems to us to be the only conclusion deducible that the instant writ petition is misconceived and not maintainable. By the same token the Rule is totally devoid of merit.

Accordingly, this Rule is discharged. Since nothing on records suggests conscious abuse of the process of court by the petitioner we refrain from awarding cost.

Direction against the Respondent earlier given is hereby vacated.

Communicate copies of this judgment to the respondents at once.

Md. Badruzzaman, J:

I agree