

In the Supreme Court of Bangladesh
High Court Division
(Special Original Jurisdiction)

Writ Petition No. 15090 of 2016.

In the matter of:

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

In the matter of:

Mohammad Samiul Huq and another.
..... Petitioners.

Vs.

Government of Bangladesh, represented
by the Secreatry, Ministry of Home
Affairs, Bangladesh Secretariat, Ramna,
Dhaka-1000 and others.

...Respondents.

Mr. Redwan Ahmed, Advocate

...For the petitioners.

Mr. Md. Ruhul Quddus, Advocates

...For the respondent No.13.

Mr. Shamsul Hasan, Advocates

..For the respondent No.14.

Mr. Mirza Al Mahmood, Advocate

..For the respondent No.26.

Mr. Bepul Bagmar, D.A.G with

Mr. Mohammad Nazrul Islam Khandaker,
A.A.G with

Ms. Tahmina Polly, A.A.G with

Mr. Md. Salim Azad, A.A.G

..For the respondent No.3.

**Heard on 15.01.2020 and 22.01.2020
and 23.01.2020**

judgment on: 10.02.2020.

Present:

Mr. Justice Sheikh Hassan Arif

And

Mr. Md. Mahmud Hassan Talukder

SHEIKH HASSAN ARIF, J

1. At the instance of two learned advocates of this Court, Rule Nisi was issued in this writ petition calling upon the respondents to show cause as to why the inaction of respondent Nos. 1 to 12 (Government, Inspector General of Police, Police Commissioners, Rapid Action Battalion and some Deputy Commissioners) to take appropriate actions immediately for preventing any sort of gambling in the name of indoor games, i.e.

cards, Dice, Housie, Nipun Khela etc. which are played for money, wager, stake or in other words risking money or something of valuables for a chance to win such money, price or other valuables by respondent Nos. 13-25 (Dhaka Club, Uttara Club and some other Clubs) at their premises, should not be declared to be without lawful authority, and as to why the said respondent Nos. 1-12 should not be directed to prevent any sort of gambling in the name of indoor games, cards, Dice, Housie, Nipun Khela etc. by the said respondent Nos. 13-25 at their premises and/or such other or further order or orders passed as to this Court may seem fit and proper.

2. Back Ground Facts:

2.1 Facts, relevant for the disposal of the Rule, are that according to the petitioners, respondent Nos. 13-25 (the said Clubs) are reputed clubs in Bangladesh and they have been maintaining common gaming houses at their premises for their members, guests and others to play cards, housie etc. which come within the definition of 'gambling' and as such prohibited by the relevant provisions of the Metropolitan Ordinances applicable to them as well as the relevant provisions of the Public Gambling Act, 1867. It is stated that since the said games, being cards and housie, are played for money, wager or stake or risking money or something of valuable for chance to win a prize, they are gambling, though some other terms are used for them, and as such they are offences

punishable under the provisions of Public Gambling Act, 1867 and different Metropolitan Ordinances of Bangladesh. Therefore, it is contended by the petitioners that the said clubs have been maintaining public/common gaming houses as punishable under Section 3 of the Public Gambling Act. It is further contended by the petitioners that Article 18 of the Constitution of the People's of Bangladesh categorically prohibits gambling and a decision of this Court, as reported in 66 DLR-380, has already termed those games as gambling. That while the Public Gambling Act has prohibited playing of such gambling or maintaining gaming houses beyond the metropolitan areas, relevant provisions of the Metropolitan Ordinances have also prohibited such gambling in the metropolitan areas. However, according to the petitioners, while the respondent-law enforcing agencies and administrations have been enforcing the provisions of the Gambling Act beyond the metropolitan areas when such gambling is played by poor people, they do not implement such prohibition in respect of those clubs which are basically run by rich people in metropolitan areas. Therefore, according to the petitioners, the law enforcing agencies and administration of the government have been adopting discriminatory measures in implementing the prohibition of gambling in Bangladesh which is violative of Article 27 of the Constitution.

2.2 It is further contended that the real victims of gambling are the wives and children of the gamblers and they are the ultimate sufferers of gambling played by those people and in those gambling, most of the players lose almost everything and the consequences are suffered by those innocent children and wives of the gamblers. Therefore, it is stated, the petitioners have come-up with this public interest litigation as the said wives and children of the gamblers are not in a position to come before this Court challenging such arrangement of gambling and playing of gambling by those rich clubs in metropolitan areas of Bangladesh.

2.3 On the above averments in the writ petition, a division bench of this Court issued the aforesaid Rule. At the time of issuance of the Rule, this Court, vide ad-interim order dated 04.12.2016, restrained those clubs by an order of injunction from playing or allowing any sort of gambling at their premises in the name of Cards, Dice, Housie, Wager, Nipun Khela etc. which are played for money, wager, stake or in other words risking money or something of valuables for a chance to win such money, price or other valuables. At the same time, this Court directed the law enforcing agencies and the administration (respondent Nos. 1 to 12) to take appropriate legal actions against anyone found at those premises playing or allowing gambling in the name of indoor games, i.e. Cards, Dice, Housie, Nipun Khela etc. within 24 (twenty four) hours from receipt of the copy of the order. Respondent Nos. 3, 4, 5

and 6 (Police Commissioners) were also directed to file compliance of the said order through the office of the Registrar General of this Court within 10(ten) days from the date of receipt of the said order.

2.4 As against above ad-interim order, Dhaka Club Ltd., Uttara Club Ltd. and Officers Club, Dhaka moved the Appellate Division, whereupon the Hon'ble Judge-in-Chamber of Appellate Division in the Leave Petitions preferred by Dhaka Club Ltd. and Officers Clubs, Dhaka, being Civil Petition for Leave to Appeal Nos. 3845 and 3873 of 2016, stayed operation of the said ad-interim order passed by the High Court Division. Subsequently, the Appellate Division, vide orders dated 11.11.2016 and 09.01.2017, allowed those stay orders to continue till disposal of the Rule expeditiously by the same bench of the High Court Division which issued the Rule. Thereafter, since the presiding Judge of the bench which issued the Rule retired, the Rule could not be heard as per the said direction of the Appellate Division. Subsequently, one Nutundhara Cultural Indoor Auditorium Ltd. added itself in the instant writ petition as respondent No. 26 vide order dated 06.02.2017 passed by a different bench, and, on an application by the said added-respondent No. 26, another division bench comprising their Lordships Ms. Justice Salma Masud Chowdhury and Mr. Justice A.K.M. Zahirul Hoque, vide order dated 10.10.2017, directed the concerned

respondents “*not to interfere with or create disturbance to the applicant, respondent No. 26, in his conducting of different types of indoor games like cards, dice, housie, nipun khela, raffle draw, one ten, one eight and other cultural programs etc as conducted by other respondents at the project premises of the applicant-respondent No.26 situated at Bhagerbazar, Bhabanipur, Police Station-Joydebpur, District-Gazipur without due process of law for a period of 3(three) months from date.*”

- 2.5 As stated above, with the retirement of his Lordship Mr. Justice Quamrul Islam Siddique, the presiding judge of the bench which issued the Rule, the Rule in this writ petition remained unattended for by any one. Neither the petitioner nor the respondents took any steps for hearing of the Rule before any division bench of this Court in spite of the fact that the Appellate Division, vide order dated 11.12.2016, directed for disposal of the Rule within 08 (eight) weeks from the date of reopening after the then ensuing vacation without allowing any adjournment. Better late than never, the Appellate Division has finally, vide order dated 30.10.2019 passed in Civil Petition for Leave to Appeal No. 3845 of 2016, sent this matter for hearing before this bench after reviewing its earlier order dated 11.12.2016. Accordingly, we have taken up this matter for hearing.

2.6 The Rule is opposed by Dhaka Club Ltd. (respondent No. 13) through Mr. Md. Ruhul Quddus, learned advocate, who filed affidavit-in-opposition mainly contending that the respondent No. 13-club is a company limited by guarantee and it is a 'members only club' and that it arranges indoor games like cards and housie for its members regularly and those games have become part of everyday social life for its members and their families. It is further contended by this respondent that these activities of the club are not meant for business, rather they are for amusement purpose and they are mostly sponsored by the club members. It is also contended by this respondent that the said activities of the club do not come within the mischief of Public Gambling Act or any other laws of the country and that the provisions of Public Gambling Act, 1867 and the provisions of the Metropolitan Ordinances, as referred to by the petitioners in the writ petition, do not have any manner of application so far as the said club is concerned.

3. Submissions:-

- 3.1 Mr. Redwan Ahmed, learned advocate appearing for the petitioners, has made the following submissions:-
- a) That the Constitution of the Peoples Republic of Bangladesh, under Article 18 (2), has provided an obligation for the State to take effective measures to prevent prostitution and gambling. According to him, the

framers of the Constitution have put 'gambling' along with the term 'prostitution' in the Constitution to signify the gravity of mischief which may be caused by the act of gambling. Therefore, according to him, even in the absence of any specific legislation in this regard, it is the obligation of the State and the government machineries to prevent gambling along with prostitution.

b) That although the Public Gambling Act, 1867 has not specifically defined the term 'gambling', the definition of 'common gaming house' may be taken into consideration to define the exact nature of gambling in addition to the meaning given in reputed dictionaries in order to find that the acts that are being committed or allowed to be committed by the said clubs in their premises come within the definition of 'gambling' and as such punishable either under the Public Gambling Act, 1867 or under the relevant provisions of the Metropolitan Ordinances.

c) That although Section 1 of the Public Gambling Act, 1867 has exempted the metropolitan area from the applicability of the provisions of the said Act, each and every Metropolitan Ordinance, by which the said metropolitans were constituted, have incorporated specific provisions prohibiting such gambling. This being so, according to him, in addition to the specific provision in the Constitution, the

legislature has also made provisions for prohibiting gambling in any form. In this regard, learned advocate has referred to the dictionary meaning of the term 'gambling' as provided in the Black's Law Dictionary as well as paragraph 13 of a reported case as decided by a division bench of this Court earlier in *Jafar Ullah vs. Bangladesh*, 66 DLR (2014)-380.

d) That this Court has already, in the above referred case of *Jafar Ullah*, declared that Nipun Khela including 1-10, 1-8 Dice and Housie are various forms of gambling, no matter they are played for money, wager, stack or otherwise and as such they are punishable. According to him, since this declaration of law by the High Court Division is yet to be interfered by the Appellate Division, the same is the law of the land and as such even if there is no specific provision in the Public Gambling Act, 1867 defining the term 'gambling', the respondents, under no circumstances, can allow playing of housie, Nipun Khela etc. including cards in different names in the premises of those Clubs or any other common gaming houses or public places.

3.2 As against above submissions, Mr. Md. Ruhul Quddus, learned advocate appearing for the Dhaka Club (respondent No. 13), has made the following submissions:

- a) That the petitioners do not have any locus standi to file this writ petition and that this writ petition does not come within the purview of public interest litigation.
- b) That the respondent No. 13-club does not play cards, housie etc. in the club premises for money or for any valuable or stakes, rather they play them for amusement only.
- c) That Section 1 of the Public Gambling Act, 1867 has categorically exempted applicability of the provisions of the said act to the metropolitan areas including Dhaka Metropolitan. This being so, the definition as well as the prohibitions provided by the said Act will not apply to the Dhaka club and other clubs within the metropolitan area.
- d) That even if the said provisions are made applicable, Dhaka Club Ltd., or the clubs similar to Dhaka Club, are not common gaming houses, as defined by Clause-(c) of Section 1A of the Public Gambling Act, 1867 and that Dhaka Club is used for many other sporting events like crickets, billiards, chess etc. and as such the same cannot be termed as 'common gaming house' as defined by the said Act.
- e) That Dhaka Club is not a public place either. Rather, it is a 'members only club' and only the members have access to

the said club. Therefore, Section 92 of the Dhaka Metropolitan Ordinance does not apply to Dhaka Club.

3.3 Mr. Bipul Bagmar, learned Deputy Attorney General present in Court, submits that he does not have any instructions for opposing the Rule. However, he submits that the government has recently taken serious initiatives for stopping any sort of gambling in the country and metropolitan areas, and has launched different drives in different Casinos that are run in clubs and arrested the people concerned who were the masterminds of those Casinos. Therefore, according to him, the present policy of the government is to discourage or stop any sort of gambling in the country.

4. Deliberations, Findings and Orders of the Court:

4.1 Before addressing the respective cases of the parties, let us first try to find out as to what is meant by the term “gambling”. Admittedly, the Public Gambling Act, 1867 has not provided any specific definition of the term ‘gambling’. However, Clause (c) of Section 1A of the said Act has provided definitions of gaming, instruments of gaming and “common gaming house” in the following terms:-

“gaming” includes wagering or betting....

.....

“instruments of gaming” includes any article used as a means or appurtenance of, or for the purpose of carrying on or facilitating, gaming; and

“common gaming house” means any house, room, tent, or walled enclosure, or space, or vehicle, or any place whatsoever, in which any 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, 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.

4.2 Sections 3 and 4 of the said Act of 1867 have made it punishable for the persons who are owners, occupiers etc of all such gaming houses and gets profits for maintaining such gaming houses, the punishment being very nominal like a fine not exceeding two hundred taka or imprisonment not exceeding three months. Lesser punishments are provided for players of such gaming. Section 6 of the said Act has further provided that if cards, gaming table, boards etc are found in any house etc., it shall be an evidence that the persons found therein are present for the purpose of gaming. On the other hand, keeping any office or place for the purpose of drawing any lottery, not being authorized by government, is an offence under Section 294A of the Penal Code 1860.

4.3 Now, since the legislature has not defined the term ‘gambling’ specifically, we have taken recourse to a reputed law dictionary, namely **Black’s Law Dictionary** [Eighth Edition, Bryan A. Garner] wherein the term ‘gambling’ has been defined in the following terms: *“The act of risking something of value, esp. money for a chance to win a prize”*. The same dictionary has

also defined “gambling device” as anything such as cards, dice or an electronic or mechanical contrivance, that allows a person to play a game of chance in which money may be won or lost. Again, according to that dictionary, ‘gambling place’ means any locations where gambling occurs.

4.4 Superior Courts of this sub-continent have time and again come across with the situations where they had to define the term ‘gambling’. The Indian Supreme Court, in **KR Lakshman vs. State of TN (1996) 2 SCC 226**, has defined the term ‘gambling’ in a negative way stating that *“the competitions where success depends on substantial degree of skill are not gambling”*. According to it *“gambling in a nutshell is payment of a prize for a chance to win a prize”*. Our Court has also tried to give a definition of the term ‘gambling’ as *“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”*. **(Jarar Ullah vs. Bangladesh, 66 DLR-380, Para-22)**.

4.5 According to a New York Penal Law, a person is said to be involved in gambling when he stakes or risks something or value upon the outcome of a contest of chance or future contingent event not under his control or influence, upon an agreement or understanding that he will receive something of value in the event of a certain outcome **(New York Penal Law, Section 225.00 (2))**. Professor Nelson Rose, one of the worlds leading experts on gambling and gambling laws, has classified three

basic elements of gambling, such as: (a) consideration, (b) chance and (c) price [see Nelson Rose, “Gambling and the Law: Is poker-like chess a game of skill?” dated 10.10.2018]. Therefore, according to him, absence of any of the above three elements will not constitute a game as gambling. As for example, if in a party all the guests are given free coupons or coins to play black jack (known as Twenty-one) or roulette (a casino game), it could not constitute a gambling as one of the essential elements, ‘consideration’, is missing.

4.6 Therefore, it appears from the above definitions that the basic elements of gambling will be met if it is found that the money or some valuable is at stake to win some valuable or money on the contingency of an event which dominantly or substantially depends on luck and not on skill. The game of gambling is different from other sports in the said very elements in that in a normal sports like cricket or football, though the players will gain certain prize or valuable if they win, but that does not depend on the contingency of an event which dominantly depends on luck. Rather, the said contingency or outcome dominantly depends on their skill of playing cricket or football. On the other hand, when an individual plays three cards, crash cards, flush, housie etc., putting some money or valuable on stake, the contingency of winning a prize or valuables dominantly depends on their luck, not on skill. Yes, the gamblers also need some skill, but that is not dominant. Rather, the luck is dominant. Of course, there are some card games wherein the contingency of winning

dominantly depends on skill and they may not come within the definition of gambling. We are not worried about them. There is some disagreement about whether raffle-draw, which is popular in picnics, should be included in the definition of gambling. The most common and sound opinion is that it depends on the intention. If a person receives a raffle ticket as a “door prize” or side-product of attending an event or purchasing a product from shopping mall etc. without paying additional money or specifically attending in order to “win,” then it is more of a promotional gift and as such not gambling, the considerations being given dominantly for attending picnics or for purchasing products. In such cases, stake is without any consideration. On the other hand, as admitted by learned advocate Mr. Ruhul Quddus in the course of hearing that winning a prize or valuables in housie, three cards, flush etc, which are commonly played in Dhaka Club and other similar clubs in exchange for money and in those cases, money is put at stake (Housie tickets/coupons are sold to the members for playing housie followed by dinner and/or cultural programs), dominantly depends on luck of individual player. Therefore, they are not skill-based games, rather they are luck-based games and as such, according to the above definitions, the said games fall within the mischief of ‘gambling’.

- 4.7 Gambling is prohibited in Islam. Quran often condemns gambling and alcohol together in the same verse recognizing that they

destroy personal and family lives. Some such verses from Quran are given below:

“They ask you [Muhammad] concerning wine and gambling. Say; ‘In them is great sin, and some profit, for men; but the sin is greater than the profit.’... Thus does Allah Make clear to you His Signs, in order that you may consider” (Quran 2:219).

“O you who believe! Intoxicants and gambling, dedication of stones, and divination by arrows, are an abomination of Satan’s handwork. Eschew such abomination, that you may prosper” (Quran 5:90).

“Satan’s plan is to excite enmity and hatred between you, with intoxicants and gambling, and hinder you from the remembrance of Allah, and from prayer. Will you not then abstain?” (Quran 5:91)

- 4.8 The history of gambling in our subcontinent may be traced back to ancient days, and even in those days the gambling was condemned largely. While examining such history in **State of Mombay v. R.M.D Chamarbaugwala, AIR 1957 SC 699** at para 46, a constitution bench of the Supreme Court of India has mentioned that the presence of gambling may be found even in the days of Mahabharat where one of the clans (Pandavas) had wagered away their chattels, Kingdom and family in a game of dice. In the same case, it condemned gambling in that it encourages a spirit of reckless propensity for making easy given

by lot or chance. Some Courts of United States of America have also condemned gambling saying that the plague of the gambling is widespread and has caused huge disasters [see Phalen Vs. Virginia, 12 LED-1030"]. However, in condemning gambling in such words, the Superior Courts of this sub-continent as well as the Courts in America, where gambling is played widely in different names, have always tried to differentiate between gambling and the games of skill and have held that the outcome of games which depend mostly on skill do not come within the mischief of gambling. Therefore, the present position of the Indian Supreme Court is that it becomes gambling if it is played for stakes. This position has not yet been disturbed by the Indian Supreme Court.

- 4.9 As stated above, a division bench of this Court has in the meantime examined this issue in **Jafar Ullah Vs. Bangladesh, 66 DLR-380**, wherein the petitioner came up before this Court for getting an approval so that he can arrange or hold different types of gambling named Nipun Khela, 1-10, 1-8, chorchori, dice, housie etc. at a premises that he has taken lease from Bangladesh Muktijoddha Welfare Club in Naogaon. A division bench of this Court then declared such games to be not permitted by law by making reference to the Public Gambling Act, 1867. In the said decision, their lordships have examined the definition of the term 'gaming' and 'common gaming house' as defined by the said Act and finally concluded that the said

games, namely Nipun Khela including 1-10, 1-8, Dice and Housie are various forms of gambling. According to the said bench, the words gambling and gaming appearing in the Public Gambling Act, 1867 are synonymous by connotation. It was further held therein that 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. It was further held by this Court that 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.

4.10 However, the main thrust of the submissions of Mr. Quddus, learned advocate appearing for the Dhaka Club Ltd., is that the Public Gambling Act, 1867 has itself excluded metropolitan area from the application of the provisions of the said Act and as such the prohibition or mischief provided by the said Act as well as the decision of this Court in the **Jafar Ullah's** case will not be applicable to the Dhaka Club Ltd. and other similar Clubs. After independence of Bangladesh, the Public Gambling act, 1867 was applicable to whole of Bangladesh. However, Metropolitan areas were excluded from such application only after the brutal killing of our father of the nation Bangabandhu Sheikh Mujibur Rahman. The military government, after 1975, has given special privilege to elites of metropolitan area in a reprehensible discriminatory way by amending section 1 of the Public Gambling Act, 1867. In this regard, we have also examined the

relevant provisions of Dhaka Metropolitan Police Ordinance, 1976, the Chittagong Metropolitan Police Ordinance, 1978 and other similar Ordinances promulgated by the said military government. It appears that all the legislations creating such metropolitans have not entirely validated gambling in metropolitan area. Section 92 of the DMP Ordinance 1976 provides that whoever assembles with others in street or public place for the purpose of gambling or wagering or joins any such assembly shall be punishable with fine which may extend to one hundred taka. Similar provision has been made in Section 94 of the CMP Ordinance, 1978. Therefore, it appears that gambling has also been prohibited by this Metropolitan Ordinances either in a street or public places though the punishment has been made very nominal, namely one hundred taka fine only.

4.11 Now the question is whether the Dhaka Club Ltd. or similar other clubs in Metropolitan area, will come within the definition of the term “Public Place”. The term ‘public place’ has been defined by Section 2(l) of the said Ordinances, which is quoted below:

“public place” includes a bank of a river or canal, a jetty, public building or monument and the precincts thereof, and all places accessible to the public for drawing water, washing or bathing or for the purpose of recreation;”

(Underlines supplied)

It appears from the above quoted definition that all places accessible to the public for various reasons including for the

purpose of recreation comes within the definition of the term 'public place'.

4.12 It has not been denied by the Dhaka Clubs or the learned advocate appearing for it that the Dhaka Club is accessible to its all members and the guests of those members. Similar accessibility is present in other such clubs in the metropolitan areas as well. It is also not denied by the learned advocate that the members of the said club and their guests attend those clubs for various reasons including for the purpose of recreation. Therefore, it cannot be said that the said members of the said club, or other clubs, as well as their guests do not come within the preview of the definition of 'public' and as such it cannot be said that the said public do not have access to those clubs for the purpose of recreation. This being so, it cannot be said that this prohibition as provided by Section 92 of the DMP Ordinance, 1976 and Section 94 of the CMP Ordinance, 1978 and other similar prohibition as provided by other Metropolitan Ordinances do not have any application to the said clubs including Dhaka Club Ltd. It is true that the penalty provided by the said provision is very minimum comparing to the financial status of the members of those clubs. However, it cannot be denied that such assemblies for the purpose of gambling and wagering in those places are prohibited by law. Provision of minimum or very nominal penalty does not make an offence or behaviour acceptable to the law enforcing agencies, particularly when gambling is clearly prohibited by Article 18(2) of the Constitution

of the People's Republic of Bangladesh and it has cast obligation on the State to "adopt effective measures to prevent prostitution and gambling".

4.13 Considering the recent policy of the government and stand taken by it against casinos and gamblings taking place in some clubs in different Metropolitans and other areas, we are of the view that the punishment provided for gambling should be increased by way of amendment in those provisions. However, in so far as the issues raised by the parties in this writ petition is concerned, we have no hesitation to declare that gambling is an offence in the eye of law in this country and it is prohibited not only by the Public Gambling Act, 1867, but also by the relevant provisions of different Metropolitan Ordinances including Dhaka Metropolitan Police Ordinance, 1976 and Chittagong Metropolitan Police Ordinance, 1978. Therefore, just because the members of those clubs are from elite part of the society and they have huge financial resources, they cannot be treated differently from other poor people who are in different places of Bangladesh (beyond Metropolitan area) are being arrested or prevented by police when they want to play gambling for their recreation. Since the law has prohibited gambling for the poor and rich irrespective of their social status, the same has to be applied to both equally in order for keeping the activities of law enforcing agencies in line with the provisions of Article 27 of the Constitution of the People's Republic of Bangladesh. Therefore, since the three cards, flash, housie etc., which are commonly played in the clubs

of respondent Nos. 13-26 and other clubs or premises in Metropolitan areas or the areas beyond the metropolitan, the people organizing such games and/or owning and occupying those premises and the people who are playing those games and keeping the instruments of those games in their premises are committing offence repeatedly. However, if the said clubs are allowing any sort of games like chess, carom or indoor cricket, indoor footballs etc., the outcome of which dominantly depend on skill and not on luck, they may be allowed to play such games in those premises. In so far as three cards, flash, Dice, Housie, Nipun Khela 1-10, 1-8 Charchari, Poker etc. are concerned, anyone found responsible in owning any places where such games are allowed to play and any one found playing such games and/or keeping instruments of such games in those premises, should be dealt with by the law enforcing agencies immediately. Any games, the outcome of which predominantly depend on luck (except government authorized lottery, see sec. 294 A Penal Code, 1860) and not on skill, are prohibited games and as such the government and the law enforcing agencies (respondent Nos.1-12) concerned are obliged by the Constitution as well as the relevant laws of the land to take immediate actions against them for seizure of those instruments as well as preventing those games from taking place. The concerned clubs including Dhaka Club also cannot allow such games in their premises under any means on the pretext of amusement or recreation.

4.14 With the above observation and finding, the Rule in this writ petition is made absolute. Accordingly, the orders of the Court are as follows:

- 1) The above mentioned games, namely Nipun Khela 1-10, 1-8 Charchari, Dice, Housie, Three cards, Flash, Poker and any other games (except government authorized lottery) played physically, electronically or by any other instruments, the outcome of which predominantly depend on luck and not on skill, are gambling. Accordingly, owning, occupying any place of such games and any instruments and allowing such games to take place, is an offence under the law of the land. However, if the above games are played without any money or valuables being put at stake (which is admittedly not the case in those clubs), they may be allowed to play such games for the purpose of amusement.
- 2) Keeping any place or office for drawing lottery, not being authorized by government, is an offence punishable under Section 294 A of the Penal Code, 1860.
- 3) Law enforcing agencies, including respondent No.1 to 12, are directed to take immediate actions for seizure of those places (Dhaka Clubs and other similar Clubs),

instruments of games as well as for preventing people from playing such games in those clubs and other clubs in the Metropolitans and beyond Metropolitans.

- 4) Raffle draws/coupons given as a side product of door-tickets for attending picnics or to purchase any products from shopping malls, the dominant intention/purpose in those cases being to attend picnic or to purchase products, do not come within the mischief of gambling.
- 5) It is expected that the government will think of seriously about amendment of the relevant provisions of law so that the prohibition of gambling applies equally to all people in Bangladesh irrespective of their financial and social status. The government should also think of seriously about increasing the punishment provided for gambling as the present punishments are very minimum considering the financial and other status of the people who are commonly engaged in those games.
- 6) Let a copy of this judgment and order be sent to the government and Inspector General of Police, Police Commissioners, Rapid Action Battalion (RAB), Deputy Commissioners (respondent No.1-12) for taking actions immediately.

7) Let a copy of this judgment and orders be also sent to the Cabinet Secretary of Bangladesh Government for dissemination of the information regarding this judgment to the concerned government officials of the country.

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(Sheikh Hassan Arif,J)

I agree.

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(Md. Mahmud Hassan Talukder, J)