

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 10TH DAY OF FEBRUARY 2021 / 21ST MAGHA,1942

WP(C).No.2096 OF 2021(S)

PETITIONER:

PAULY VADAKKAN, AGED 50 YEARS, S/O. JOSEPH VADAKKAN,
VADAKKAN HOUSE, ANNAMANADA P.O, THRISSUR DISTRICT,
KERALA 680 741

BY ADV. SRIJOMY K. JOSE

RESPONDENTS:

- 1 STATE OF KERALA, REPRESENTED BY ITS CHIEF SECRETARY TO THE
GOVERNMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM 695 001
- 2 SECRETARY TO THE GOVERNMENT, INFORMATION TECHNOLOGY
DEPARTMENT, GOVERNMENT OF KERALA, SECRETARIAT,
THIRUVANANTHAPURAM 695 001
- 3 THE KERALA STATE POLICE CHIEF,
VATHUZHACAUD, THIRUVANANTHAPURAM 695 014
- 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 X 7 PRIVATE LIMITED,
401, 4TH FLOOR, BUILDING NO. 16, WING B, INTERFACE COMPLEX,
LINK ROAD, MALAD, MUMBAI MAHARASHTRA 400 067
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 560 103
- 7 VIRAT KOHLI (CRICKETER), DLF-CITY PHASE 1,
UTTAM NAGAR, WEST DELHI, DELHI-110 059.
- 8 AJU VARGHESE, PUTHUPARAMBIL HOUSE, THIRUNILATH ROAD,
COCHIN UNIVERSITY P.O., KALAMASSERY, ERNAKULAM-682 022.

- 9 TAMANNAAH BHATIA, D/O.SANTHOS, SHOP NO.72/74,
BUILDING NO.70, KANSARA CHAWL, KALBADEVI ROAD,
MUMBAI, MAHARASTRA-400 002.

BY ADV. SRI.ARAVINDA KUMAR BABU T.K., SR GP FOR R1 TO R3
SRI.S.SREEKUMAR(SR) FOR R5
R8 BY ADV. SRI.C.P.UDAYABHANU
R8 BY ADV. SRI.NAVANEETH.N.NATH
R8 BY ADV. SRI.BOBAN PALAT
R8 BY ADV. SRI.P.U.PRATHEESH KUMAR
R8 BY ADV. SHRI.RASSAL JANARDHANAN A.
R8 BY ADV. SHRI.ABHISHEK M. KUNNATHU
R8 BY ADV. SRI.P.R.AJAY
SRI. SANTHOSH MATHEW FOR R6
SRI.VIJAY V PAUL FOR R6
SRI.THOMAS KURUVILLA FOR R5
SRI.JOSEPH KODIANTHARA(SR) FOR R5
SRI.JAISHANKAR V NAIR, CGC FOR R4
R4 BY SRI.SUVIN R.MENON, CGC FOR R4

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10.02.2021,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 10th day of February 2021

S.MANIKUMAR, C.J.

The main concern raised by the petitioner in this Public Interest Litigation is that there is no mechanism to monitor the online gambling and online betting. Petitioner has sought for a declaration that playing online gambling and online betting in Virtual Space, Cyber Space, through Mobile Applications, as well as through computers, more particularly “online rummy”, be declared as unlawful and illegal.

2. He has also sought for a mandamus directing respondent No.1/State of Kerala, represented by the Chief Secretary to the Government, Government Secretariat, Thiruvananthapuram, to ban all the 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 the forms of online gambling and online betting.

3. Petitioner has submitted that the law relating to gaming in Kerala, is mainly dealt with Kerala Gaming Act, 1960. However, the Act does 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 or gain to the person owing, occupying, keeping such instruments of gaming in the enclosed physical premise. Thus, there is always an element of physical premise present in it. Therefore, the online gambling games do not come under this legislation. According to Mr. Jomy K. Jose, learned counsel for the petitioner, online gambling platforms are engaged in illegal activities and they remain unchecked, owing to deficiencies in the legal infrastructure. Gambling through online platforms is now a growing menace in the State.

4. In support of his contentions, petitioner has relied on a decision of the Madras High Court in **D. Siluvai Venance v. State of Tamil Nadu** [2020 (3) MLJ (Cr1) 710] and also a decision of Gujarat High Court in **Amit M. Nair v. State of Gujarat** in Writ Petition (PIL) No.146 of 2020.

5. That apart, Mr. Jomy K. Jose, learned counsel for the petitioner also submitted that the Government of Andhra Pradesh have promulgated the Andhra Pradesh Gaming (Amendment) Ordinance, 2020

amending the Andhra Pradesh Gaming Act, 1974 and State of Tamil Nadu is also contemplating a similar amending Act.

6. Learned Senior Government Pleader Mr.Aravinda Kumar Babu submitted that online gambling and online betting are not included in the Kerala Gaming Act, 1960. Law needs to be framed to bring this under the Government's regulatory purview.

7. On 9.2.2021, when the matter came up for hearing, learned Senior Government Pleader Mr.Aravinda Kumar Babu, on instructions, submitted that respondent No.3/Kerala State Police Chief, Vazhuthacaud, Thiruvananthapuram, has sent a proposal to the Government to include online gambling and online betting under the Kerala Gaming Act, 1960, and that the same is pending consideration in the Law Ministry, Government of Kerala. Today, it is submitted by the learned Senior Government Pleader that the said proposal is under the consideration of the Government and a decision in this regard would be taken, within two weeks from today.

8. Thus from the statement made on behalf of the Government it is revealed that the existing law, does not bring online gambling or online betting, within the purview of the Kerala Gaming Act, 1960, and

inclusion of the same in the existing enactment is a legislative function.

9. Placing on record the submission of the learned Government Pleader, Respondents 1 and 2 (Chief Secretary to Government, State of Kerala and the Secretary to the Government, Information Technology Department) respectively, are directed to take appropriate decision on the aspect of inclusion of online gambling and online betting, within the purview of the Kerala Gaming Act, 1960, within a period of two weeks from today.

With the above directions, the writ petition is disposed of.

SD/-
S.MANIKUMAR
CHIEF JUSTICE

SD/-
SHAJI P. CHALY
JUDGE

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APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1 TRUE COPY OF THE REPORT PUBLISHED BY THE NEW INDIAN
EXPRESS ONLINE DATED 03-01-2021

EXHIBIT P2 TRUE COPY OF THE ADVERTISEMENTS IN WHICH
RESPONDENTS 7,8 AND 9 APPEARS.

// TRUE COPY //

P.S. TO JUDGE