IN THE HIGH COURT OF KARNATAKA AT BENGALURU

[BANGALORE TURF CLUB LIMITED VS. STATE OF KARNATAKA AND OTHERS]

SRKKJ
18.06.2024
(VIDEO CONFERENCING / PHYSICAL HEARING)

Orders on Interim Prayers

W.P.No.13503/2024 is filed by the petitioner - the Bangalore Turf Club Limited (‘for short ‘the BTC’) against the respondent – State of Karnataka including its Home Department and Finance Department who have passed the impugned orders, both dated 06.06.2024.

2. Aggrieved by the very same impugned orders, **W.P.No.13575/2024** is filed by the Karnataka Race Horse Owner’s Association, while **W.P.No.13528/2024** is filed by the Karnataka Trainers Association. So also, **W.P.No.14556/2024** is filed by Sri.Hemanth Kumar & others, who are Punters and **W.P.No.15294/2024** is filed by the Jockeys’ Association of India challenging the very same impugned orders. In these petitions, the BTC has also been arrayed as party-respondent along with the State of Karnataka.

3. Since common grievances are ventilated by the BTC, the Race Horse Owner’s Association, Horse Trainers Association,

Punters and Jockeys' Association and identical/similar questions of law and fact arise for consideration in the petitions, they have been tagged and taken up together for consideration.

4. In the first instance, the petitioners were aggrieved by the inaction on the part of the State in not considering the applications of BTC dated 21.03.2024 for issuance / grant of license for on-course and off-course horse racing and betting for the period from April 2024 to August 2024 as per the proposed All India Racing Fixtures / Calendar for the financial year 2024-25 and also for all future on-course and off-course race meetings.

5. On 21.05.2024 and 23.05.2024, this Court passed interim orders directing the State Government to consider and take appropriate decision on the applications for license submitted by the BTC under the Mysore Race Course Licensing Act, 1952 (for short 'the Licensing Act') and Mysore Race Course Licensing Rules, 1952 (for short 'the Licensing Rules'). As per the said orders, the respondent – State was granted time up to 06.06.2024 to consider the application of BTC and pass appropriate orders / take appropriate decision after providing an opportunity to the petitioners.

6. In pursuance of the aforesaid interim orders passed by this Court and subsequent correspondence between the parties, the Home Department of the respondent – State passed the impugned order dated 06.06.2024 rejecting the application of BTC for conducting of racing activities which was followed by the impugned order also dated 06.06.2024 passed by the Finance Department rejecting BTC's application for grant of betting license.

7. The petitioners accordingly amended their respective petitions by incorporating the aforesaid subsequent events and have assailed the aforesaid impugned orders dated 06.06.2024 which reject the request of BTC for grant / issuance of license for racing as well as betting.

8. The petitions have been opposed by the respondent – State which has filed its statement of objections and has sought to support the impugned orders and seeks dismissal of the petitions.

9. Briefly stated, the various contentions urged by the petitioners are as under:-

The petitioners have put forth various contentions as regards its establishment and racing and betting activity being

carried on for more than 100 years and reference is made to several facts and documents in this regard. Petitioner-BTC also refers to the litigation between BTC and the State in relation to the Bangalore Race Course premises which is pending before the Apex Court in SLP No.18238/2010. It is contended that on an earlier occasion, the Excise Department of the State refuse to remove the CL-4 license of the petitioner-BTC for the year 2017-18, on account of which, the petitioner approached this Court in W.P.No.28646/2017, in which, an interim order / direction dated 01.07.2017 was issued to the State to renew the license by accepting the license fee and accordingly, the said writ petition was disposed of on 12.02.2018 as having become infructuous.

9.1 Petitioners contend that subsequently, since the respondents did not grant licenses in favour of BTC, writ petitions in W.P.No.52510/2017 & connected petitions were preferred by BTC and others, in which a co-ordinate Bench of this Court passed an interim order dated 15.12.2017, pursuant to which the State granted licenses and the racing and betting activities which continued without any hindrance and the said

petitions were disposed off on 27.03.2019 as having become infructuous.

9.2 Petitioners contend that in terms of the racing calendar / fixtures for the year 2024-25, the petitioner – BTC submitted application for grant of license for racing and betting and the same was issued in favour of BTC on 05.03.2024 by the respondents permitting racing and betting activities.

9.3 Petitioners further contend that subsequently when the BTC submitted applications for issuance of license for the period from April 2024 to August 2024, the State did not take any action / steps in this regard and the petitioners approached this Court by way of the present petitions; upon rejection of the application by the respondents vide impugned orders dated 06.06.2024, the petitioners got their petitions amended and have challenged the impugned rejection orders dated 06.06.2024 and 06.06.2024 respectively for both racing and betting.

10. The respondents – State has filed its statement of objections and contested the petitions putting forth various contentions by disputing and denying the allegations and claim made by the petitioners. The respondents – State has

supported and justified the impugned orders and has sought for dismissal of the petitions on various grounds.

11. Heard learned Senior counsel for the respective petitioners and learned Advocate General for the respondents – State and perused the material on record.

12. In addition to reiterating the various contentions urged in the petition and referring to the material on record, learned Senior counsel Sri.S.S.Naganand for the petitioner – BTC in W.P.No.13503/2024 invited my attention to the impugned orders both dated 06.06.2024 in order to point out that the same are illegal, arbitrary, discriminatory, irrational and unreasonable apart from being violative of principles of natural justice opposed to the doctrine of proportionality. It is submitted that BTC has cancelled the permits/licenses of the bookmakers/accused persons and undertake not to issue anymore permit/licenses, if BTC is permitted to carry on racing and betting activity. So also, the BTC undertakes to abide by the terms and conditions to be imposed by the State Government for the purpose of permitting BTC to carry on racing and betting activity. It is therefore submitted that the impugned orders which have stopped the racing and betting

activity of BTC have resulted in irreparable injury and hardship to them and as such, it is necessary that interim orders are to be passed in favour of the petitioners.

13. The learned Senior counsel in the connected matters Sri.K.N.Phaneendra, Sri.Ravi B.Naik and Sri.D.R.Ravishankar appearing on behalf of the Race Horse Association, Trainers' Association, Punters and Jockeys' Association respectively, would reiterate the various submissions made by the learned Senior counsel appearing on behalf of the petitioner – BTC. In addition thereto, all of them have jointly submitted that their life and livelihood are dependent on the racing and betting activity being carried on by the BTC as per the annual racing fixtures / calendar and the impugned orders refusing to grant license has resulted in severe and tremendous financial loss to the petitioners as well as the employees of the BTC and as such, it is necessary to pass interim orders as prayed for by the petitioners in their petitions also.

14. In support of their submissions, learned Senior counsel placed reliance upon the following judgments:-

(i) Dr.K.R.Lakshmanan v. State of Tamilnadu and Another – (1996) 2 SCC 226;

(ii) Deoraj v. State of Maharastra and others – (2004) 4 SCC 697;

(iii) State of Kerala & others vs. Kandath Distelleries – (2013) 6 SCC 573;

(iv) The Official Liquidator vs. Dharti Dhan (P) Ltd., - (1977) 2 SCC 166;

(v) Ram Vilas v. State of U.P. and others – 2023 SCC OnLine All 416;

(vi) M/s.Navodaya Education Trust and others vs. Union of India & others – W.A.No.836/2018 dated 05.02.2019;

(vii) Gorkha Security Services vs. Government (NCT of Delhi) and others – (2014) 9 SCC 105;

(viii) Shri Sitaram Sugar Company Limited and Another vs. Union of India and others – (1990) 3 SCC 223;

(ix) Vinod Kumar vs. State of Haryana and others – (2013) 16 SCC 293;

(x) K.R.Purushothaman vs. State of Kerala – (2005) 12 SCC 631;

(xi) S.K.Alagh vs. State of Uttar Pradesh – (2008) 5 SCC 662;

(xii) Gujarat Steel Tubes Ltd., vs. Gujarat Steel Tubes Mazdoor Sabha – (1980) 2 SCC 593;

(xiii) Grindlays Bank Limited vs. Income Tax Offcier, Calcutta and others – (1980) 2 SCC 191;

(xiv) Commentary on the Constitution of India, DD Basur , Eight Edition, 2010;

(xv) Principles of Administrative Law, MP Jain, Seventh Edition, 2011;

(xvi) Administrative Law, Sir William Wade, Tenth Edition, 2009;

(xvii) American Jurisprudence, Second Edition, 1970;

(xviii) P.Bhima Reddy vs. State of Mysore – (1969) 1 SCC 68;

15. Per contra, learned Advocate General appearing on behalf of the respondents-State would support the impugned orders and submit that it was impermissible to pass interim orders which would traverse beyond the main reliefs sought for by the petitioners. It was submitted that as per the provisions of the Licensing Act and Rules, the BTC was wholly responsible for illegal betting being carried on within its premises, which was sufficient to justify rejection of the application for grant of license. It was submitted that grant of license for racing and betting by the respondents was purely discretionary in nature and the petitioner – BTC does not have vested right to demand grant of license. It was also submitted that various illegalities viz., benami transactions, non-deposit of collection of money in cash, non-deposit of GST from punters, non-raising of invoices as required under the Betting Tax Act, non-payment of TDS,

permitting unlicensed book makers and punters in carrying on betting activity and also permitting some of the accused against whom criminal proceedings are pending were some of the circumstances taken into account by respondents to refuse grant of license in favour of BTC.

15.1 Learned Advocate General submitted that the scope of judicial review while considering grant or rejection of application for license is limited and the said power granted to the Home and Revenue Department cannot be exercised under Article 226 of the Constitution of India by passing interim orders in this regard. It is also submitted that there was loss of Rs.296 crores by way of tax evasion which is also a factor for refusal of grant of license in favour of the petitioner.

15.2 In support of his contentions, learned Advocate General has placed reliance upon the following judgments:-

(i) State of Kerala vs.Kandath Distelleries – (2013) 6 SCC 573;

(ii) Chinqleput Bottlers vs. Majestic Bottling Company – (1984) 3 SCC 258;

(iii) Municipal Corporation of Greater Mumbai & others vs. Rafiqunnisa M.Khalifa – (2019) 5 SCC 119;

(iv) State of West Bengal vs. Naruddin Mallick – (1998) 8 SCC 143;

(v) Chief Forest Conservator (Wildlife) & others vs. Nisar Khan – (2003) 4 SCC 595;

(vi) State of Uttar Pradesh vs. Rakesh Kumar Keshari – (2011) 5 SCC 341;

(vii) Sarvepalli Ramaiah vs. District Collector, Chitoor –(2019) 4 SCC 500;

(viii) W.B.Central School Service Commission vs. Abdul Halim – (2019) 18 SCC 39;

(ix) Bajaj Hindusran Ltd., vs. Sri.Shadilal Enterprises Ltd., & others – (2011) 1 SCC 640;

(x) Assistant Collector of Central Excise, West Bengal vs. Dunlop India Ltd., - (1985) 1 SCC 260;

(xi) State of U.P. & others vs. Ram Sukhi Devi – (2005) 9 SCC 733;

(xii) M.J.Sivani & others vs. State of Karnataka & others – (1995) 6 SCC 289;

16. I have given my anxious consideration to the rival submissions and perused the material on record.

17. In my considered opinion, the petitioners have made out a *prima facie* case and the balance of convenience is in their favour and they would be put to irreparable injury and hardship and justice would suffer and consequently, pending disposal of the petitions, the impugned orders dated 06.06.2024 and 06.06.2024 passed by the Home Department and Finance Department of the State of Karnataka respectively refusing to

grant licenses for racing and betting activities by the petitioners are wholly illegal, arbitrary, discriminatory, irrational and unreasonable apart from being violative of principles of natural justice opposed to the doctrine of proportionality and the same deserve to be stayed and suitable/appropriate directions are to be issued in relation to carrying on racing and betting activities by the petitioners for the following reasons:

(i) It is well settled that horse racing is a game where winning depends substantially and preponderantly on skill as held by the Apex Court in ***Lakshmanan's case supra*** and consequently, respondents were not entitled to refuse licence on the ground that petitioners were carrying on illegal racing and betting activities.

(ii) ***Sir William Wade*** in his book, ***'Administrative Law',*** Tenth Edition while dealing with licensing powers states as under:

> *NO UNFETTERED DISCRETION IN PUBLIC LAW: ABUSE OF LICENSING POWERS*
>
> *The law was admirably stated by a Canadian judge in a celebrated case where a liquor licence had been unlawfully cancelled for extraneous political reasons, purportedly under an Act which said that the*

liquor commission 'may cancel any permit at its discretion'. Rand J. said:

In public regulation of this sort there is no such thing as absolute and untrammelled discretion', that is that action can be taken on any ground or for any reason that can be suggested to the mind of the administrator, no legislative Act can, without express language, be taken to contemplate an unlimited arbitrary power, exercisable for any purpose, however capricious or irrelevant, regardless of the nature or purpose of the statute. Fraud and corruption in the Commission may not be mentioned in such statutes but they are always implied as exceptions. 'Discretion' necessarily implies good faith in discharging public duty; there is always a per- spective within which a statute is intended to operate; and any clear departure from its lines or objects is just as objectionable as fraud or corruption. Could an applicant be refused a permit because he had been born in another Province or because of the colour of his hair? The ordinary language of the Legislature cannot be so distorted.

In this case a restaurant proprietor's liquor licence had been cancelled by the Quebec Liquor Commission at the instigation of the Prime Minister of Quebec, for the reason that the proprietor habitually stood bail for members of the sect of Jehovah's Witnesses, who were a nuisance to the police. The Supreme Court of Canada awarded damages against the Prime Minister and stigmatised the cancellation as a gross abuse of legal power expressly intended to punish

him for an act wholly irrelevant to the statute, a punishment which inflicted on him, as it was intended to do, the destruction of his economic life as a restaurant keeper within the Province.

And in addition it was said:

To deny or revoke a permit because a citizen exercises an unchallengeable right totally irrelevant to the sale of liquor in a restaurant is equally beyond the scope of the discretion conferred.

As well as affording an outstandingly clear example of the abuse of executive power, this case illustrates the personal liability of ministers" and the possibility of a remedy in damages for maladministration.

In a comparable English case the revocation of television licences by the Home Office was condemned by the Court of Appeal, The Home Secretary had a statutory power to revoke or vary any licence under the Wireless Telegraphy Act 1949, and he elected to use this power to cancel the licences of persons who took them out during the currency of their previous licences in order to avoid a sharp increase in the licence fee. The increase took effect on a fixed date and it was in no way unlawful for a licence-holder to obtain a new licence before that date at the lower fee. The Home Office had no power to prevent this, but they tried to enforce a policy of exacting the higher fee by resorting to their power to revoke licences. This was held to be a clear abuse of the power and also an illegal attempt to levy

money for the use of the Crown contrary to the Bill of Rights 1688. Lord Denning MR said:

But when the licensee has done nothing wrong at all, I do not think the Minister can lawfully revoke the licence, at any rate, not without offering him his money back, and not even then except for good cause. If he should revoke it without giving reasons, or for no good reason, the courts can set aside his revocation and restore the licence. It would be a misuse of the power conferred on him by Parliament: and these courts have the authority-and, I would add, the duty-to correct a misuse of power by a minister of his department, no matter how much he may resent it or warn us of the consequences if we do.

In effect, the Home Office had tried to use their licensing powers to obtain taxing powers which had not been conferred on them. Their handling of the affair was also strongly criticised by the Parliamentary Commissioner for Administration.

Other examples of the legal limits to the discretion of licensing authorities are given below.

THE STANDARD OF REASONABLENESS

The doctrine that powers must be exercised reasonably has to be reconciled with the no less important doctrine that the court must not usurp the discretion of the public authority which Parliament appointed to take the decision. Within the bounds of legal reasonable- ness is the area in which the deciding authority has genuinely free discretion. If it passes

those bounds, it acts ultra vires. The court must therefore resist the temptation to draw the bounds too tightly, merely according to its own opinion. When a Divisional Court yielded to that temptation by invalidating a Secretary of State's decision to postpone publication of a report by company inspectors, the House of Lords held that the judgments 'illustrate the danger of judges wrongly though unconsciously substituting their own views for the views of the decision-maker who alone is charged and authorised by Parliament to exercise a discretion', The court must strive to apply an objective standard which leaves to the deciding authority the full range of choices which the legislature is presumed to have intended. Decisions which are extravagant or capricious cannot be legitimate. But if …….

(iii) ***S.207 Chapter F*** of the book, ***'American Jurisprudence'*** dealing with Licences, Permits and Certificates states as under:

F. LICENSES, PERMITS, AND CERTIFICATES

§ 207. Generally.

According to some authorities, an applicant for a license who has established his right thereto need not resort to a mandamus to compel its issuance when it has been wrongfully withheld, but may, without a license, pursue the business of his calling, which is not unlawful in itself and which he has a constitutional right

to pursue." Other authority, however, is to the contrary, and it is established that mandamus will be granted, in appropriate case, to compel the issuance of a license or permit required by law. The established rules relating to mandamus apply when the writ is sought for this purpose. The relator must show that he is duly qualified, that conditions precedent which have been validly imposed have been complied with, and that in all respects he has a clear right to the issuance of a license. It must also be shown that a clear legal duty to issue the license, not involving discretion, is enjoined by law on the respondent officer, board, or official, that there is statutory authority for the performance of the act, and that the performance of the duty has been refused. Mandamus will not lie to compel the granting of a license under a void law, and if an ordinance prohibiting anyone from engaging in or working at a specified trade or business before obtaining a license is invalid, the writ will not lie to compel the issuance of a license, because none can be legally required. Even though a licensing ordinance is entirely void, a judgment in lieu of a prerogative writ will not be rendered to compel the use of premises for a purpose that is violative of a valid zoning ordinance." It is not the character of the refusal of the license or permit, but the right of the petitioner to the remedy, that controls, and the fact that only one or more of several reasons which would justify the authorities in refusing the application is given by them to the applicant as ground for the refusal when the demand is made does not

prevent them from pleading and relying on other reasons in mandamus to compel issuance of the license or permit.

As in other cases, the writ will not issue if the relator has, or has failed to exhaust, another available adequate remedy, such as appeal or an administrative remedy.

§208. Discretion as to issuance of license.

Boards and officers charged with the duty or power of issuing licenses and permits usually exercise a discretionary function in the matter. Their determination involves a judgment as to the right and fitness of the applicant, and generally calls for examining evidence and passing upon questions of fact. Where such is the case, courts may compel them to exercise their judgment for discretion, but will not attempt to control their discretion" or compel them by mandamus to decide in a particular way. If in the proper exercise of their power they refuse a license or permit, the writ will not issue to revise or review their decision. Accordingly, where a bond is required of an applicant, the licensing authority cannot, in passing upon its sufficiency, be controlled by mandamus. But the rule denying mandamus in such cases presupposes that the board or officer, in withholding the license or permit, acted in good faith and with legal discretion. If there is an arbitrary abuse of the power vested in the respondent, amounting to a virtual refusal to perform the duty

involved or to act at all in contemplation of law, mandamus will be granted.

On summary proceedings in mandamus to compel the issuance of a license, the constitutionality of a statute giving discretion to grant or refuse the license cannot be determined; and where a board has discretion to grant or refuse a license, the conditions on which it offers to grant the license are entirely immaterial on an application for mandamus.

§ 209. Ministerial duty to issue license.

If a licensing board or officer is vested with ministerial powers only, and has no discretion in the matter of issuing licenses, mandamus will lie to compel the issuance of a license. As a general rule, where all the requirements of law preliminary to acquiring a license have been complied with, the issuance of a license is a ministerial duty, which may be enforced by mandamus.

(iv) In ***Kandath Distilleries case supra***, the Apex Court held that the exercise of statutory discretion by the respondents for the purpose of issuance of license is circumscribed by and subject to Article 14 of the Constitution of India and the same cannot be arbitrary or discriminatory as hereunder:

32. *Discretionary power leaves the donee of the power free to use or not to use it at his discretion. (Refer Drigraj*

> *Kuer v. Amar Krishna Narain Singh [AIR 1960 SC 444] .) Law is well settled that the exercise of statutory discretion must be based on reasonable grounds and cannot lapse into the arbitrariness or caprice anathema to the rule of law envisaged in Article 14 of the Constitution. It is trite law that, though, no citizen has a legal right to claim a distillery licence as a matter of right and the Commissioner or the State Government is entitled to either not to entertain or reject the application, they cannot enter into a relationship by arbitrarily choosing any person they like or discriminate between persons similarly circumscribed. The State Government, when decides to grant the right or privilege to others, of course, cannot escape of the rigour of Article 14, in the sense that it can act arbitrarily. In such a situation, it is for the party who complains to establish that a discriminatory treatment has been meted out to him as against similarly placed persons but cannot demand a licence for establishing a distillery unit, as a matter of right*.

(v) In ***Dharti Dhan's case supra***, the Apex Court held that the respondents – State being a donee of power is bound to exercise it in accordance with the Licensing Act and Rules and their purpose as under:

> ***10.*** *The principle laid down above has been followed consistently by this Court whenever it has been contended that the word "may" carries with it the obligation to exercise a power in a particular manner or direction. In such a case, it is always the purpose of the*

> *power which has to be examined in order to determine the scope of the discretion conferred upon the donee of the power. If the conditions in which the power is to be exercised in particular cases are also specified by a statute then, on the fulfilment of those conditions, the power conferred becomes annexed with a duty to exercise it in that manner. This is the principle we deduce from the cases of this Court cited before us: Bhaiya Punjalal Bhagwandin v. Dave Bhagwatprasad Prabhuprasad [(1963) 3 SCR 312 : AIR 1963 SC 120 : (1963) 2 SCJ 441] , State of Uttar Pradesh v. Jogendra Singh [(1964) 2 SCR 197 : AIR 1963 SC 1618 : (1963) 2 Lab LJ 444] , Sardar Govindrao v. State of M.P. [(1965) 1 SCR 678 : AIR 1965 SC 1222 : (1966) 1 SCJ 480] , Shri A.C. Aggarwal, Sub-Divisional Magistrate, Delhi v. Smt Ram Kali [(1968) 1 SCR 205 : AIR 1968 SC 1 : 1968 Cri LJ 82] , Bashira v. State of U.P. [(1969) 1 SCR 32 : AIR 1968 SC 1313 : 1968 Cri LJ 1495] and Prakash Chand Agarwal v. Hindustan Steel Ltd. [(1970) 2 SCC 806 : (1971) 1 SCR 405] .*

(vi) In ***Sitaram Sugar Company's case*** and ***Vinod Kumar's case*** supra, the Apex Court held that Wednesbury principles of reasonableness, proportionality, etc., are applicable to judicial review of administrative action by holding as under:

Sitaram Sugar Company's case;

46. *Any arbitrary action, whether in the nature of a legislative or administrative or quasi-judicial exercise of power, is liable to attract the prohibition of Article 14 of the Constitution. As stated in E.P. Royappa v. State of Tamil Nadu [(1974) 4 SCC 3 : 1974 SCC (L&S) 165 : (1974) 2 SCR 348] "equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch". Unguided and unrestricted power is affected by the vice of discrimination : Maneka Gandhi v. Union of India [(1978) 1 SCC 248, 293-94 : AIR 1978 SC 597] . The principle of equality enshrined in Article 14 must guide every State action, whether it be legislative, executive, or quasi-judicial : Ramana Dayaram Shetty v. International Airport Authority of India [(1979) 3 SCC 489, 511-12 : (1979) 3 SCR 1014, 1042] ; Ajay Hasia v. Khalid Mujib Sehravardi [(1981) 1 SCC 722 : 1981 SCC (L&S) 258] and D.S. Nakara v. Union of India [(1983) 1 SCC 305 : 1983 SCC (L&S) 145] .*

47. *Power delegated by statute is limited by its terms and subordinate to its objects. The delegate must act in good faith, reasonably, intra vires the power granted, and on relevant consideration of material facts. All his decisions, whether characterised as legislative or administrative or quasi-judicial, must be in harmony with the Constitution and other laws of the land. They must be "reasonably related to the purposes of the enabling legislation". See Leila Mourning v. Family Publications Service [411 US 356 : 36 L ed 2d 318] . If they are*

manifestly unjust or oppressive or outrageous or directed to an unauthorised end or do not tend in some degree to the accomplishment of the objects of delegation, court might well say, "Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires" : per Lord Russel of Killowen, C.J. in Kruse v. Johnson [(1898) 2 QB 91, 99 : 78 LT 647] .

***48.** The doctrine of judicial review implies that the repository of power acts within the bounds of the power delegated and he does not abuse his power. He must act reasonably and in good faith. It is not only sufficient that an instrument is intra vires the parent Act, but it must also be consistent with the constitutional principles : Maneka Gandhi v. Union of India [(1978) 1 SCC 248, 293-94 : AIR 1978 SC 597] (SCC pp. 314-15).*

***49.** Where a question of law is at issue, the court may determine the rightness of the impugned decision on its own independent judgment. If the decision of the authority does not agree with that which the court considers to be the right one, the finding of law by the authority is liable to be upset. Where it is a finding of fact, the court examines only the reasonableness of the finding. When that finding is found to be rational and reasonably based on evidence, in the sense that all relevant material has been taken into account and no irrelevant material has influenced the decision, and the decision is one which any reasonably minded person, acting on such evidence, would have come to, then judicial review is exhausted even though the finding may not necessarily be what the court would have come to as*

a trier of fact. Whether an order is characterised as legislative or administrative or quasi-judicial, or, whether it is a determination of law or fact, the judgment of the expert body, entrusted with power, is generally treated as final and the judicial function is exhausted when it is found to have "warrant in the record" and a rational basis in law : See Rochester Tel. Corp. v. United States [307 US 125 (1939) : 83 L ed 1147] . See also Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation [(1948) 1 KB 223 : (1947) 1 All ER 498] .

50. *As stated by Lord Hailsham of St. Marylebone L.C. (HL) in Chief Constable of the North Wales Police v. Evans [(1982) 1 WLR 1155, 1160-61 : (1982) 2 All ER 141] :*

> *"The function of the court is to see that lawful authority is not abused by unfair treatment and not to attempt itself the task entrusted to that authority by the law.... The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised by law to decide for itself a conclusion which is correct in the eyes of the court".*

In the same case Lord Brightman says:

> *"Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made."*

51. *A repository of power acts ultra vires either when he acts in excess of his power in the narrow sense or when he abuses his power by acting in bad faith or for an inadmissible purpose or on irrelevant grounds or without regard to relevant considerations or with gross unreasonableness. See Associated Provincial Picture*

Houses Ltd. v. Wednesbury Corporation [(1948) 1 KB 223 : (1947) 1 All ER 498] . In the words of Lord Macnaghten in Mayor & C. Westminster Corporation v. London and North Western Railway [1905 AC 426, 430 : 93 LT 143] .

"....It is well settled that a public body invested with statutory powers such as those conferred upon the corporation must take care not to exceed or abuse its powers. It must keep within the limits of the authority committed to it. It must act in good faith. And it must act reasonably. The last proposition is involved in the second, if not in the first."

In Barium Chemicals Ltd. v. Company Law Board [1966 Supp SCR 311 : AIR 1967 SC 295 : (1966) 36 Comp Cas 639] , this Court states : (SCR pp. 359-60, per Shelat, J.)

".... Even if (the statutory order) is passed in good faith and with the best of intention to further the purpose of the legislation which confers the power, since the authority has to act in accordance with and within the limits of that legislation, its order can also be challenged if it is beyond those limits or is passed on grounds extraneous to the legislation or if there are no grounds at all for passing it or if the grounds are such that no one can reasonably arrive at the opinion or satisfaction requisite under the legislation. In any one of these situations it can well be said that the authority did not honestly form its opinion or that in forming it, it did not apply its mind to the relevant facts."

In Renusagar [(1908) 1 KB 441 : 77 LJ KB 236] , Mukharji, J., as he then was, states : (SCC p. 104, para 86)

"The exercise of power whether legislative or administrative will be set aide if there is manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary. Similarly, if the power has been exercised on a non-consideration or non-application of mind to relevant factors the exercise of power will be regarded as manifestly erroneous. If a power (whether

legislative or administrative) is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated".

52. *The true position, therefore, is that any act of the repository of power, whether legislative or administrative or quasi-judicial, is open to challenge if it is in conflict with the Constitution or the governing Act or the general principles of the law of the land or it is so arbitrary or unreasonable that no fair minded authority could ever have made it.*

Vinod Kumar's case

23. *We may usefully refer to the judgment of the English court in Roberts v. Hopwood [1925 AC 578 : 1925 All ER Rep 24 (HL)] laying down the law in the following terms: (AC p. 613)*

"… A person in whom is vested a discretion must exercise his discretion upon reasonable grounds. A discretion does not empower a man to do what he likes merely because he is minded to do so—he must in the exercise of his discretion do not what he likes but what he ought. In other words, he must, by use of his reason, ascertain and follow the course which reason directs. He must act reasonably."

24. *The matter can be looked into from another angle as well. In those cases where courts are concerned with the judicial review of the administrative action, the parameters within which administrative action can be reviewed by the courts are well settled. No doubt, the scope of judicial review is limited and the courts do not go into the merits of the decision taken by the administrative authorities but are concerned with the*

decision-making process. Interference with the order of the administrative authority is permissible when it is found to be irrational, unreasonable or there is procedural impropriety. However, where reasonable conduct is expected, the criterion of reasonableness is not subjective but objective; albeit the onus of establishment of unreasonableness rests upon the person challenging the validity of the acts. It is also trite that while exercising limited power of judicial review on the grounds mentioned above, the court can examine whether administrative decisions in exercise of powers, even if conferred in subjective terms are made in good faith and on relevant considerations. The courts inquire whether a reasonable man could have come to the decision in question without misdirecting himself on the law or facts in a material respect. (See M.A. Rasheed v. State of Kerala [(1974) 2 SCC 687] , SCC pp. 690-91, para 10.)

25. *The decision of the administrative authority must be related to the purpose of the enabling provisions of the rules or statutes, as the case may be. If they are manifestly unjust or outrageous or directed to an unauthorised end, such decisions can be set aside as arbitrary and unreasonable. Likewise, when action taken is ultra vires, such action/decision has no legal basis and can be set aside on that ground. When there are rules framed delineating the powers of the authority as well as the procedure to be followed while exercising those powers, the authority has to act within the limits defined by those rules. A repository of power acts ultra vires*

either when he acts in excess of his power in the narrow sense or when he abuses his power by acting in bad faith or for an inadmissible purpose or on irrelevant grounds or without regard to relevant considerations or with gross unreasonableness. This was so explained in Shri Sitaram Sugar Co. Ltd. v. Union of India [(1990) 3 SCC 223] in the following manner: (SCC p. 253, paras 51-52)

"51. A repository of power acts ultra vires either when he acts in excess of his power in the narrow sense or when he abuses his power by acting in bad faith or for an inadmissible purpose or on irrelevant grounds or without regard to relevant considerations or with gross unreasonableness. See Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn. [(1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] In the words of Lord Macnaghten in Westminster Corpn. v. London and North Western Railway Co. [1905 AC 426 (HL)] : (AC p. 430)

'… It is well settled that a public body invested with statutory powers such as those conferred upon the corporation must take care not to exceed or abuse its powers. It must keep within the limits of the authority committed to it. It must act in good faith. And it must act reasonably. The last proposition is involved in the second, if not in the first.

'

In Barium Chemicals Ltd. v. Company Law Board [AIR 1967 SC 295 : 1966 Supp SCR 311] , this Court states: (AIR p. 323, para 60)

'60. … Even if [the statutory order] is passed in good faith and with the best of intention to further the purpose of the legislation which confers the powers, since the Authority has to act in accordance with and within the limits of that legislation, its order can also be challenged if it is beyond those limits or is passed on grounds extraneous to the legislation or if there are no grounds at all for passing it or if the grounds are such that no one can reasonably arrive at the opinion or satisfaction requisite under the legislation. In any one of these situations it can well be said that the authority did not honestly form its opinion or that in forming it, it did not apply its mind to the relevant facts.'

> *In Renusagar [State of U.P. v. Renusagar Power Co., (1988) 4 SCC 59 : AIR 1988 SC 1737] , Mukharji, J., as he then was, states: (SCC p. 104, para 86)*
>
> *'86. … The exercise of power whether legislative or administrative will be set aside if there is manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary. Similarly, if the power has been exercised on a non-consideration or non-application of mind to relevant factors the exercise of power will be regarded as manifestly erroneous. If a power (whether legislative or administrative) is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated.*
> '
>
> *52. The true position, therefore, is that any act of the repository of power, whether legislative or administrative or quasi-judicial, is open to challenge if it is in conflict with the Constitution or the governing Act or the general principles of the law of the land or it is so arbitrary or unreasonable that no fair-minded authority could ever have made it..*

(vii) In ***Purushothaman's case*** and ***S.K.Alagh's case*** supra, the Apex Court held that mere knowledge of the plan does not constitute criminal conspiracy and the director or employee of the company cannot be held to be vicariously liable for offences of the company unless laid down under the statute as under:

Purushothaman's case;

> ***13.*** *To constitute a conspiracy, meeting of minds of two or more persons for doing an illegal act or an act by illegal means is the first and primary condition and it is not necessary that all the conspirators must know each and every detail of the conspiracy. Neither is it necessary*

that every one of the conspirators takes active part in the commission of each and every conspiratorial acts. The agreement amongst the conspirators can be inferred by necessary implication. In most of the cases, the conspiracies are proved by the circumstantial evidence, as the conspiracy is seldom an open affair. The existence of conspiracy and its objects are usually deduced from the circumstances of the case and the conduct of the accused involved in the conspiracy. While appreciating the evidence of the conspiracy, it is incumbent on the court to keep in mind the well-known rule governing circumstantial evidence viz. each and every incriminating circumstance must be clearly established by reliable evidence and the circumstances proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn, and no other hypothesis against the guilt is possible. Criminal conspiracy is an independent offence in the Penal Code. The unlawful agreement is sine qua non for constituting offence under the Penal Code and not an accomplishment. Conspiracy consists of the scheme or adjustment between two or more persons which may be express or implied or partly express and partly implied. Mere knowledge, even discussion, of the plan would not per se constitute conspiracy. The offence of conspiracy shall continue till the termination of agreement.

S.K.Alagh's case;

16. *The Penal Code, save and except some provisions specifically providing therefor, does not*

contemplate any vicarious liability on the part of a party who is not charged directly for commission of an offence.

17. *A criminal breach of trust is an offence committed by a person to whom the property is entrusted.*

18. *Ingredients of the offence under Section 406 are:*

"(1) a person should have been entrusted with property, or entrusted with dominion over property;

(2) that person should dishonestly misappropriate or convert to his own use that property, or dishonestly use or dispose of that property or wilfully suffer any other person to do so;

(3) that such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust."

(viii) In ***Gujarat Steel Tubes' case*** and ***Grindlays Bank's case supra***, the Apex Court held that it was permissible for this Court to exercise the power of an authority as hereunder:

Gujarat Steel Tubes' case;

73. *While the remedy under Article 226 is extraordinary and is of Anglo-Saxon vintage, it is not a carbon copy of English processes. Article 226 is a sparing surgery but the lancet operates where injustice suppurates. While traditional restraints like availability of alternative remedy hold back the court, and judicial power should not ordinarily rush in where the other two*

branches fear to tread, judicial daring is not daunted where glaring injustice demands even affirmative action. The wide words of Article 226 are designed for service of the lowly numbers in their grievances if the subject belongs to the court's province and the remedy is appropriate to the judicial process. There is a native hue about Article 226, without being anglophilic or anglophobic in attitude. Viewed from this jurisprudential perspective, we have to be cautious both in not overstepping as if Article 226 were as large as an appeal and not failing to intervene where a grave error has crept in. Moreover, we sit here in appeal over the High Court's judgment. And an appellate power interferes not when the order appealed is not right but only when it is clearly wrong. The difference is real, though fine.

Grindlays Bank's case

7. *The next point is whether the High Court possessed any power to make the order directing a fresh assessment. The principal relief sought in the writ petition was the quashing of the notice under Section 142(1) of the Income Tax Act, and inasmuch as the assessment order dated March 31, 1977 was made during the pendency of the proceeding consequent upon a purported non-compliance with that notice, it became necessary to obtain the quashing of the assessment order also. The character of an assessment proceeding, of which the impugned notice and the assessment order formed part, being quasi-judicial, the "certiorari" jurisdiction of the High Court under Article 226 was*

attracted. Ordinarily, where the High Court exercises such jurisdiction it merely quashes the offending order and the consequential legal effect is that but for the offending order the remaining part of the proceeding stands automatically revived before the inferior court or tribunal with the need for fresh consideration and disposal by a fresh order. Ordinarily, the High Court does not substitute its own order for the order quashed by it. It is, of course, a different case where the adjudication by the High Court establishes a complete want of jurisdiction in the inferior court or tribunal to entertain or to take the proceeding at all. In that event on the quashing of the proceeding by the High Court there is no revival at all. But although in the former kind of case the High Court, after quashing the offending order, does not substitute its own order it has power nonetheless to pass such further orders as the justice of the case requires. When passing such orders the High Court draws on its inherent power to make all such orders as are necessary for doing complete justice between the parties. The interests of justice require that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court, by the mere circumstance that it has initiated a proceeding in the court, must be neutralised. The simple fact of the institution of litigation by itself should not be permitted to confer an advantage on the party responsible for it. The present case goes further. The appellant would not have enjoyed the advantage of the bar of limitation if. notwithstanding his immediate grievance against the

notice under Section 142(1) of the Income Tax Act, he had permitted the assessment proceeding to go on after registering his protest before the Income Tax Officer, and allowed an assessment order to be made in the normal course. In an application under Section 146 against the assessment order, it would have been open to him to urge that the notice was unreasonable and invalid and he was prevented by sufficient cause from complying with it and therefore the assessment order should be cancelled. In that event, the fresh assessment made under Section 146 would not be fettered by the bar of limitation. Section 153(3)(i) removes the bar. But the appellant preferred the constitutional jurisdiction of the High Court under Article 226. If no order was made by the High Court directing a fresh assessment, he could contend as is the contention now before us, that a fresh assessment proceeding is barred by limitation. That is an advantage which the appellant seeks to derive by the mere circumstance of his filing a writ petition. It will be noted that the defect complained of by the appellant in the notice was a procedural lapse at best and one that could be readily corrected by serving an appropriate notice. It was not a defect affecting the fundamental jurisdiction of the Income Tax Officer to make the assessment. In our opinion, the High Court was plainly right in making the direction which it did. The observations of this Court in ***Director of Inspection of Income Tax (Investigation) New Delhi v. Pooran Mall & Sons*** *[(1975) 4 SCC 568, 572*

: 1975 SCC (Tax) 346 : (1974) 96 ITR 390, 395] are relevant. It said: (SCC p. 572, para 6)

The Court in exercising its powers under Article 226 has to mould the remedy to suit the facts of a case. If in a particular case a court takes the view that the Income Tax Officer while passing an order under Section 132(5) did not give an adequate opportunity to the party concerned it should not be left with the only option of quashing it and putting the party at an advantage even though it may be satisfied that on the material before him the conclusion arrived at by the Income Tax Officer was correct or dismissing the petition because otherwise the party would get an unfair advantage. The power to quash an order under Article 226 can be exercised not merely when the order sought to be quashed is one made without jurisdiction in which case there can be no room for the same authority to be directed to deal with it. But in the circumstances of a case the court might take the view that another authority has the jurisdiction to deal with the matter and may direct that authority to deal with it or where the order of the authority which has the jurisdiction is vitiated by circumstances like failure to observe the principles of natural justice the court may quash the order and direct the authority to dispose of the matter afresh after giving the aggrieved party a reasonable opportunity of putting forward its case. Otherwise, it would mean that where a court quashes an order because the principles of natural justice have not been complied with, it should not while passing that order permit the tribunal or the authority to deal with it again irrespective of the merits of the case.

The point was considered by the Calcutta High Court in Cachar Plywood Ltd. v. ITO [(1978) 114 ITR 379 (Cal)] and the High Court, after considering the provisions of Section 153 of the Income Tax Act, considered it appropriate. while deposing of the writ petition, to issue a direction to the Income Tax Officer to complete the assessment which, but for the direction of the High Court, would have been barred by limitation.

(ix) In ***Deoraj's case*** supra, the Apex Court held that in exceptional cases, final relief can be granted at the interim stage as under:

> ***12.*** *Situations emerge where the granting of an interim relief would tantamount to granting the final relief itself. And then there may be converse cases where withholding of an interim relief would tantamount to dismissal of the main petition itself; for, by the time the main matter comes up for hearing there would be nothing left to be allowed as relief to the petitioner though all the findings may be in his favour. In such cases the availability of a very strong prima facie case — of a standard much higher than just prima facie case, the considerations of balance of convenience and irreparable injury forcefully tilting the balance of the case totally in favour of the applicant may persuade the court to grant an interim relief though it amounts to granting the final relief itself. Of course, such would be rare and exceptional cases. The court would grant such an interim relief only if satisfied that withholding of it would prick the conscience of the court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the court would not be able to vindicate the cause of justice. Obviously such would be rare cases accompanied by compelling circumstances, where the injury complained of is immediate and pressing and would cause extreme hardship. The conduct of the parties shall also have to be*

seen and the court may put the parties on such terms as may be prudent.

(x) In ***Bhima Reddy's*** case supra, this Court held that it was permissible to grant Mandamus to issue a license as hereunder:

> ***19.*** *Having regard to the fact that the appellant had already deposited about Rs.40 lakhs the Divisional Commissioner, Gulbarga, acted rather precipitately and harshly in cancelling the sale. For the reasons already given, the order of cancellation (Ex. J) is invalid. The order must be set aside and a writ of mandamus must issue for the grant of licences to the appellant.*
>
> ***23.*** *In the result the appeal is allowed with costs in this Court and in the High Court. The order passed by the High Court is set aside. Writ Petition No. 1889 of 1968 is allowed. The order, dated June 26, 1968 (Ex. J), is set aside. Respondents 1 and 2 are directed to grant immediately licences to the appellant to vend liquors in the combined groups of shops in Raichur and Gulbarga Districts for the remaining period of the year 1968-1969. Respondents 1 and 2 are also directed to cancel forthwith the licences issued to Respondent 4 in respect of the aforesaid groups of shops.*

(xi) A perusal of the impugned orders will indicate that the respondents have refused grant license in favour of BTC on the ground that illegal activities are being carried on by the

bookmakers against whom criminal proceedings have been initiated; in this context, it is relevant to state that the Licensing Act and Rules do not provide for any nexus or connection between grant/issuance of licenses and the alleged illegal activities of the book makers and criminal cases pending against them and consequently, the said circumstances could not have been made the basis for refusal to grant/issue license in favour of the petitioners.

(xii) A perusal of the impugned orders passed by the respondents – State will clearly indicate that the same are neither relevant, material or germane for the purpose of grant of license and the said reasons are untenable and without any basis; in this regard, it is significant to note that there is also no connection or nexus whatsoever between the alleged non-payment of GST, income tax etc., and the grant of license and in the absence of any material to establish violation of the provisions contained in the Licensing Act and Rules or the conditions of license granted earlier, the respondents were not justified in refusing to grant license which had been granted continuously for several decades in favour of the petitioners

who had been carrying on racing and betting activities without any hindrance or interruption.

(xiii) The impugned orders also indicate that the respondents have arbitrarily placed reliance upon monies said to have been found on the date of the raid that took place which is also neither relevant nor material for the purpose of issuance of racing and betting license; so also the KGST Act, 2017 expressly repeals the Mysore Betting Tax Act, 1932 and consequently, violation of the provisions of a non-existent Act by either the petitioner – BTC or the book makers would not entail rejection of application for grant of license as wrongly recorded in the impugned orders.

(xiv) The impugned orders also discloses that the respondents have refused to grant licences on the ground that the petitioners have allegedly violated the GST Act, Income Tax Act, Betting Tax Act, etc; in this context, apart from the fact that there is no *prima facie* material to establish the said allegations, it cannot be gainsaid that any such allegations/violations would necessarily have to be investigated by the respective Departments and in the absence of any nexus or connection whatsoever between grant of license

under the Licensing Act and Rules and the said allegations/violations, the respondents were not justified in rejecting the applications filed by the petitioners.

(xv) The material on record reveals that on a previous occasion when the respondents refuse to grant license in the year 2017, this Court in W.P.52510/2017 & connected matters, directed the State to consider grant of licence in favour of the BTC and the same was granted by the respondents who also constituted a Racing Monitoring Committee vide Notification dated 04.01.2018; it is relevant to state that even during the said period also, there was no stoppage of the racing and betting activity by the petitioners, which is sufficient to come to the conclusion that the respondents were not justified in refusing to grant licences without appreciating that licences could have been granted in favour of BTC by imposing terms and conditions and taking steps to regulate the racing and betting activity of the petitioners.

(xvi) The impugned orders are vitiated inasmuch as even after the alleged raid conducted in the BTC premises on 12.01.2024, pursuant to which, an FIR was registered in Crime No.9/2024, the respondents-State themselves granted licences

in March, 2024 in favour of BTC and consequently, the State was clearly estopped from relying upon the very same criminal proceedings for the purpose of refusing licence for the month of April 2024 onwards in favour of the petitioners.

(xvii) The impugned orders completely ignore the undisputed fact that BTC was not arraigned as an accused in the criminal proceedings and as such, the said criminal proceedings could not have been relied upon by the State to refuse licences in favour of BTC by passing the impugned orders which are liable to be stayed on this ground also.

(xviii) The impugned orders also do not take note of the fact that though criminal proceedings were initiated by the State against some of the book makers in 2019 itself, the State has continued to issue licences subsequently also in favour of BTC, which makes it clear that there is no nexus or connection between grant or issuance of licences and the alleged illegal activity of the book makers or criminal cases pending against them and consequently, merely alleging conspiracy between some of the members of the petitioner – BTC and the book makers, without any material to substantiate

the same, also cannot be made the basis to refuse grant of licence in favour of the petitioner – BTC.

(xix) The impugned orders heavily places reliance upon the charge sheet filed in the criminal proceedings for the purpose of refusing grant of license in favour of BTC; in this regard, it is pertinent to note that apart from the fact the BTC itself is not arraigned as an accused in the said charge sheet, mere allegations made in the charge sheet and arraigning of only the bookmakers, the Chairman of the BTC and one paid employee could not have been made the basis to refuse grant of license, especially when pendency of the said criminal proceedings does not operate as a disqualification or an embargo for grant of license in favour of the BTC for racing and betting activities.

(xx) Rule 5 of the Licensing Rules empowers the State to call for reports from other authorities and conduct enquiry for the purpose of issuing licence; in the instant case, in the absence of any such report being obtained nor enquiry being conducted, the respondents-State was clearly not justified in refusing to grant licence in favour of the petitioners by passing the impugned orders which are vitiated on this ground also.

(xxi) The impugned orders are violative of principles of natural justice and the same deserve to be stayed not only on account of lack of sufficient and reasonable opportunity being granted to the BTC but also on account of the show cause notice lacking material particulars and being inadequate which amounts to denial of principles of natural justice warranting interference by this Court.

(xxii) Though the impugned orders allege violation of the provisions of the Licensing Act and Rules, necessary material particulars and details in this regard are conspicuously absent in the impugned orders; it follows therefrom that the bald, vague, cryptic, laconic, unreasoned and non-speaking allegations made in the impugned orders in the regard is yet another circumstance that would vitiate the impugned orders.

(xxiii) The material on record indicates that the Managing Committee of the BTC comprised of two State Government nominees, Mr.Atheeq L.K. (IAS), Additional Chief Secretary, Finance Department and D.Dayananda, (IPS), Commissioner of Police, as on 27.09.2023, when Mr.Arvind Raghavan was unanimously elected as Chairman of the BTC in the presence of the aforesaid 2 State nominees and

consequently, mere arraigning of the said Chairman along with one paid employee as accused in the criminal proceedings also could not have been construed or treated as either valid or sufficient and justifiable ground for the State to refuse grant of licence in favour of the petitioners.

18. It is necessary to state that I have arrived at the aforesaid findings based on a *prima facie* scrutiny of the material on record and upon consideration of the rival contentions for the purpose of the interim prayers sought for by the petitioners; in this context, it is relevant to note that by virtue of the impugned orders, the entire racing and betting activities of the petitioners, which was hitherto being carried on continuously and uninterruptedly for decades, has now come to a complete standstill and a grinding halt thereby resulting in irreparable injury and hardship not only to the petitioners but also to the race horses themselves who are lying idle without their regular racing activity, which would cause ailments, diseases etc., to the race horses which is sufficient to indicate that the balance of convenience is in favour of the petitioners.

19. It is also significant to note that since majority of the allegations contained in the impugned orders are made against the book makers, both licensed and unlicensed, the petitioner-BTC has undertaken to cancel all book maker licences and not grant any more licences which would be sufficient to safeguard any further illegal activity being carried on by the said book makers in future also; these facts and circumstances obtaining in the instant case would unmistakeably justify invocation of the extraordinary jurisdiction vested in this Court in rare and exceptional cases as held by the Apex Court in ***Deoraj's case supra*** by passing appropriate interim orders in favour of the petitioners; further, the respondents-State would be entitled to monitor, supervise and regulate the racing and betting activities of the petitioners by taking necessary steps in this regard during the pendency of the petitions and consequently, it cannot be said that any prejudice would be cause either to the respondents or anyone else, if appropriate interim orders are passed in favour of the petitioners.

20. Though the impugned orders purport to allege violation of terms and conditions of the licence granted earlier as well as violation of the provisions of the Licensing Act and Rules as grounds for refusal of the instant licences, the details and particulars of the earlier alleged licences and their violations nor the relevant provisions of the Licensing Act and Rules are forthcoming in the impugned orders which are vitiated on this score also.

21. Both sides have urged several contentions and cited several authorities as regards scope of judicial review of the impugned orders, which are administrative in nature, jurisdiction of this Court to issue Mandamus, maintainability of the writ petitions, permissibility of issuing directions to the respondent-State to grant license etc; in my considered opinion, all these issues/questions would necessarily have to be decided at the time of final hearing of the petitions; suffice it to state at this stage that on a overall consideration of the rival contentions, petitioners have clearly made out a *prima facie* case, balance of convenience is in favour of the petitioners who would be put to irreparable injury and

hardship, if appropriate interim orders are not passed in their favour.

22. In so far as the judgments relied upon by the learned Advocate General are concerned, the said judgments would have to be examined in detail at the time of final hearing and as such, it would not be necessary to deal with the same elaborately for the purpose of the present interim order.

23. In the result, I pass the following:

ORDER

(i) The Impugned Orders produced in W.P.13503/2024 as Annexure-BN bearing No.HD 241 SST 2024 dated 06.06.2024 passed by the Additional Chief Secretary, Home Department and Annexure-BP bearing No.FD 08 CRC 2022 dated 06.06.2024 passed by the Respondent No.1 are hereby stayed until further orders;

(ii) Pending decision in the petitions, by way of an interim arrangement and subject to the final outcome of the petitions, petitioners in all the writ petitions are permitted to conduct and carry on all on-course and off-course racing and betting activities of the Bangalore Turf Club, subject to the same terms and conditions of the licences issued in March, 2024 by the

respondents-State and also subject to complying with the provisions of the Mysore Race Course Licensing Act, 1952 and Mysore Race Course Licensing Rules, 1952.

(iii) Respondents-State are also directed to permit the petitioners to conduct and carry on all such on-course and off-course racing and betting activities of the Bangalore Turf Club without any hindrance, interruption or impediment;

(iv) Liberty is reserved in favour of the Respondents-State to monitor, supervise and regulate the racing and betting activities of the petitioners by taking necessary steps in this regard.

List the matters in 'B' group after 4 weeks.

Sd/-
(S.R.KRISHNA KUMAR)
JUDGE

SRL
List No.: 2 Sl No.: 4