

In Re: Venugopal and ors.

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Court : Chennai

Decided On : Jan-27-1954

Reported in : AIR1954Mad901

Judge : Basheer Ahmed Sayeed, J.

Acts : [Madras City Police Act, 1888](#) - Sections 49A and 49A(1); Madras City Police (Amendment) Act, 1949; [Constitution of India](#) - Articles 14, 19, 19(1), 19(2) and 19(6); Madras City Police Gaming Rules, 1949 - Rule 3

Appeal No. : Criminal Misc. Petn. No. 67 of 1954 and Cri. Revn. Case Nos. 2, 16 and 17 of 1954

Appellant : In Re: Venugopal and ors.

Advocate for Pet/Ap. : M.K. Nambiar, ;T.V. Venkatachari and ;F.S. Vaz, Advs. of Jan & San;State Prosecutor

Disposition : Petition allowed

Judgement :

ORDER

Basheer Ahmed Sayeed, J.

1. The first of these petitions is by one Venugopal, who has been charged by the state before the Third Presidency Magistrate, under Section 49A, Madras City

Police Act, for the alleged offence of keeping for sale a bi-weekly called 'the Original Vel Sporting News' printed and published at Original Vel Printing Work, Madras-1, and who prays that this court may be pleased to call for the records in the said C. C. No. 5429 of 1953 on the file of the Third Presidency Magistrate, Saidapet, Madras and quash the said proceedings. In the next three revision cases, the petitioners were charged for a similar offence before the Chief Presidency Magistrate's Court, Egmore, in C. C. Nos. 1867, 1863 & 1869 of 1953 & they were convicted under the said Section 49A, City Police Act & sentenced to pay a fine of Rs. 25 each. These petitioners have now preferred revision petitions against the convictions and sentences by the learned Chief Presidency Magistrate, Egmore, who delivered a common judgment in all the three cases.

2. In the petition before me for quashing the proceedings pending before the Third Presidency Magistrate in C. C. No. 5429 of 1953 the offending publication is a bi-weekly called 'The Original Vel Sporting News' printed and published by one Sri V. Balasubramani at the Original Vel Printing Works, Madras. This bi-weekly is alleged to be in circulation over since 1936 and no action has been ever taken against its sale so far. It was registered as a bi-weekly and bears a registration No. M. 3774 and is priced annas four a copy. The first six pages of this bi-weekly dated 21-11-1953 (Vol. 16) No. 180 contain news about 'The Cricket Test at Delhi' 'The Duncan Cup Cricket at Madras' 'Five Lucky Charms', 'The Queen and the Riddle of Minister's summons to Sunday talks at Castle' 'Herbert Morrison's attack' and various other miscellaneous news including 'Hitler's valet held by Reds' and about 'Peter' the world-beating athlete, 'Stopping Zatopek' and so forth. The news on pages 7 to 11, both inclusive, relates to the 'Track Work at Guindy' 'Spurts' 'Madras Races (Autumn Meeting)' and 'Acceptances for Madras races to be run on Sunday, 22nd November 1953' and also news about Madras races 1952-53 Of the 15th November 1953.

The rest of the pages from 12 to 16, both inclusive, contain news about the 'President's Diagnosis', 'Russian Hydrogen Bomb' 'Problems in and out of Russia', 'High Court for Andhra', 'Next English Cricket session'. 'Pool for independents', 'Borneo and Juliet-- at 71 and 72', and news under the caption 'No doubt about it, Lucy Won Title' who is said to be the new light weight champion of Great Britain. It

will be observed that the racing news, both past and future, is contained only in pages 7 to 11 of this bi-weekly. That is said to be the offending matter in respect of which the petitioner has been charged. It must be stated at the very outset that the petitioner is neither the printer nor the publisher, but is only a vendor of the bi-weekly, apparently on some business terms. The charge against him is, as could be gathered from the evidence of the Sub-Inspector of police J-1 division, that on 22-11-1953 at about 2-30 p.m. the petitioner was found on the race course, Guindy, selling the Original Vel Sporting News containing mainly information regarding the horses running in Madras races on 22-11-1953 and giving information regarding tips on horses in each race event. The Sub-Inspector seized from the petitioner 87 copies of that bi-weekly under a mahazar and filed a charge-sheet under Section 49A, Madras City Police Act.

3. The main point raised by M. K. Nambiar appearing on behalf of the petitioner in the quashing proceedings is that Section 49A, Madras City Police Act hereinafter referred to as 'the Act' is 'ultra vires' of the Constitution particularly as it offends both Articles 14 and 19(1)(a) of the Constitution. Before this point is considered it is necessary to set out the relevant section, viz., 49A and the rules framed thereunder. In the Madras City Police Act (Act 3 of 1888) as amended by the Madras City Police Act Gaming (Amendment) Act, 1949, (Madras Act 7 of 1949) a new Section (Section 49A) was introduced in 1949. That section is in the following terms:

'(1) Whoever makes, prints or otherwise produces, publishes, sells, distributes or keeps for sale or distribution, any book, leaflet or other document containing news of acceptances for horse-races or purporting to give tips or any information which is likely to aid or facilitate wagering or betting on horse-races, shall be punishable with fine which may extend to five hundred rupees or with imprisonment which may extend to one month or with both;

Provided that nothing contained in this subsection, in so far as it relates to horse-races outside the Province of Madras, shall apply to any newspaper:

Provided further that in regard to horse-races within the province of Madras,

(i) any newspaper, or

(ii) any publication which is issued by or under the authority of any race club empowered in this behalf by the Provincial Government and which is distributed solely within the precincts of such race-club or any race-course connected therewith, may contain such information as may be permitted by rules made by the Provincial Government under Sub-section (2).

Explanation: For the purposes of this subsection, 'Newspaper' means any periodical work which contains public news or comments on public news and is published at intervals not exceeding one week, not being a work solely or mainly concerned with races.

(2) The Provincial Government may, by notification in the Fort St. George Gazette, make rules for the purpose of carrying into effect the provisions of Sub-section (1).'

4. In the Madras City Police Act, the definition of the term 'gaming' was also amended in 1949 by the same Act (Act 7 of 1949) to read as follows:

'Gaming does not include a lottery but includes wagering or betting.'

5. In the rules framed under Section 49A(2) of the Act and styled as the Madras City Police Gaming' Rules, 1949, rule No. 2 provides that publications such as (1) the Prospectus, (2) the Entries, (3) the Handicaps, (4) The Acceptances and scratchings, and (5) the Official race book or race book issued by or under the authority of the race club, may contain the information specified against each of the said publications under the said rule. Rule 3 which is the relevant rule provides that in regard to horse-races within the Province of Madras, any newspaper may contain the following information, viz.

'A factual discussion of the prospects of each racing season as a whole before its commencement without reference to betting on any event. The number of meetings, scale and rates of entry fees, summary of races, summary of stakes money, racing fixtures, names of horses as contained in the Entries, Handicaps, Acceptances and Scratchings, spurts, track and gallop notes of horses together with their timings, history of horses, number, time and distance of each race,

names of owners, and trainers of such horses, names of jockeys, with their colours for each event or double or treble event, name of the plate or cup for which the horses are entered, handicapped and finally accepted, the number of the double and treble events, a description of the facts relating to pedigree, form handicap and track performance of the candidates in each race before the event, and after the event, reports, photographs and results of the races and dividends on totalizators, excluding references to betting.'

6. These rules as amended by G. O. No. MS. No. 4521 Home, dated 11-11-1949 appear to be more comprehensive and elaborate than the previous rules.

7. The chief points that have to be noticed in Section 49A of the Act and the Gaming Rules, 1949 extracted above are: Firstly the making, printing or publishing or selling of books or leaflets containing news of acceptances for horse-racing, or purporting to give tips or any information which is likely to aid or facilitate wagering or betting on horse-races is made punishable with a fine which may extend upto Rs. 599, or imprisonment or both. The second point is that, if any newspaper does anything of the kind contained in Section 49A(1) in so far as it relates to horse-racing outside the Province of Madras, it shall not be an offence. The third point is that, in regard to horseraces within the province of Madras, any newspaper or publication which is issued by or under the authority of the race-club empowered by the Provincial Government, may publish such information, as may be permitted by the rules made by the Provincial Government under Sub-section (2) of Section 49A.

In regard to publication which is issued by or under the authority of the race-club, the limitation is that it shall be distributed solely within the precincts of such race club or any race course connected therewith. But in regard to newspaper, the qualification is that the newspaper shall be any periodical work which contains public news or comments on public news and it shall be published at intervals not exceeding one week and it should not be solely or mainly concerned with races.

The salient feature that emerges from the language of this section and the rules framed thereunder is that the Legislature does not envisage any prohibition against horse-racing as such. As a matter of fact, it has not been shown that

horse-racing as such has been prohibited anywhere in the world, whether it is a sport or past time, or it occasions betting or wagering. But it is well known that nowhere in the world does horse-racing take place without wagering or betting on such horse races.

Because betting or wagering on horse races is incidental to horse-racing, it is contended by the learned State Prosecutor that the State Legislature has thought it fit that any book, leaflet or other document containing news of acceptances for horse races or news purporting to give tips, or any information, which purports to aid or facilitate wagering or betting on horse-races should be banned and that the distinction between horse-racing and betting on horse-races should be kept in mind when the validity of the section now impugned is to be considered. It is acknowledged on all hands that there is nothing immoral about horse-racing, and Mr. Vaz appearing for the petitioners has brought to my notice that the Bengal Government has set up a commission of enquiry on horse racing in West Bengal and that memoranda have been invited by that Commission from all persons interested in the future of horse breeding and racing in India and that the commission has reiterated the view that its findings will have a great bearing on the future of horse breeding in India which will have to be fostered to meet the country's military, police and civil requirements.

Obviously, because a horse-racing involves horse-breeding and horse breeding in its turn has an intimate relation with the military, police and civil requirements of the country, horse-racing has never been thought of being banned from the land by any Government or Legislature. Perhaps, there is justification on the other hand, to encourage horse racing and horse breeding and that is probably the reason why the Bengal Government has taken up that question.

But, at the same time, it must be conceded that betting or wagering on horse-races is not the same as horse-racing as such. As pointed out by Mr. Vaz, betting or wagering on horse races may be a social evil. But, even this social evil, it is urged by Mr. Vaz, has not evoked any universal condemnation all the world over. Whether this social evil has or has not received universal condemnation, the fact remains that the Madras Legislature has thought it fit to prohibit gaming which is

defined as including wagering and betting under the Madras City Police Act and also to prohibit all activities which are likely to aid or facilitate wagering or betting on horse races, and they have declared such activities as offences which are liable to fine or imprisonment or both. How far the Legislature has succeeded in putting down this evil, is not for this Court to decide. But what this Court has to decide is how far the legislation that has been enacted and later amended is in accord with the rights secured to the citizens under the [Constitution of India](#).

8. Article 19(1)(a) of Part III 'Fundamental Rights' enacts that all citizens shall have the right to freedom of speech and expression and Article 19(1)(g) provides that all citizens shall have the right to practise any profession or to carry on any occupation, trade or business. It has been ruled by various decisions of this Court and also of the Supreme Court (not to speak of the American decisions) on the point that the right of freedom of speech and expression includes also the freedom of the press, which, in its turn, includes the right to print and publish matter. Vide -- 'Srinivasa Bhat v. State of Madras' : AIR1951 Mad70 . The question is whether Section 49A of the Act aims at prohibiting the exercise of the freedom of speech and expression which includes that of the press as well. The language of that section is fairly plain and simple. It declares that whoever makes, prints or otherwise produces, publishes, sells, distributes or keeps for sale or distribution, any book, leaflet or other document containing news of acceptances for horse-races or purporting to give tips or any information which is likely to aid or facilitate wagering or betting on horse races, shall be punishable with fine which may extend to five hundred rupees or with imprisonment which may extend to one month or with Both.

There is, therefore, little room for controversy that Section 49A, Madras City Police Act seeks to encroach upon the rights secured to the citizens by Article 19(1)(a) and 19(1)(g) of the Constitution. It has, however, to be remembered that these rights of freedom of speech and expression and to practise any profession, or to carry on any occupation, trade or business are not absolute rights as are sometimes assumed by contending parties. For, it is well known that the Constitution itself has imposed certain limitations upon the exercise of freedom of speech and expression and also upon the practice of any profession or trade or

occupation or business. The inhibitions imposed by the Constitution on the exercise of these rights are contained in Articles 19(2) and 19(6).

9. Article 19(2) as amended is in the following terms:

'Nothing in Sub-clause (a) of Clause (i) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of Court, defamation or incitement to an offence.'

Article 19(6) is in the following terms; 'Nothing in the said Sub-clause (g) shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to--

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or (ii) the carrying on by the State, or by a Corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.'

10. Section 49A of the City Police Act having been enacted prior to the constitution, it is an Existing law and, according to Article 19(2) nothing in Sub-clause (a) of Clause (1) shall affect the operation of this existing law in so far as such Law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the security of the State, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, defamation, or incitement to an offence. So far as this Section 49A is concerned, its operation can be saved therefore only if it amounts to a reasonable restriction on the exercise of the right to freedom of speech and expression in the interests of decency or morality, or, according to Article 19(6), if that section relates to the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business. The parts of Article 19(2) other than the words 'in the interests of.....decency or morality' may be left

out as they do not have any relevancy to the operation of the existing law, namely, Section 49A of the Act. The question, therefore, is whether this Section 49A of the Act is an enactment which imposes reasonable restrictions on the exercise of the right of freedom of speech and expression in the interests of decency or morality, or whether it relates to the professional or technical qualification, necessary for practising any profession or carrying on any occupation, trade or business.

11. The terms 'decency or morality' have not been defined anywhere, and Mr. Vaz has urged that, in Clause (2) of Article 19, both the terms must be taken not as disjunctive but as conjunctive. That is to say, though the word 'or' is interposed between 'decency' and 'morality', still they form one concept and they should be read as 'decency and morality'. These terms, according to him, are at the same time both very wide and vague and, if at all, they may have reference only to what is sought to be prohibited and declared offences under Chap. XIV, Penal Code.

That Chapter relates to offences affecting public health, safety, conveniences, decency and morals and the sections thereunder relate to different groups of offences. The offences relating to decency and morals are contained in Section 292 to 294. These sections cover a wide field, including mostly sale, letting on hire, distribution, exhibition, or import or export, advertising, etc., of obscene books, pamphlets, papers, drawings, paintings etc., or indulging in similar activities in relation to persons under the age of 20 years; or the doing of any obscene act or the singing or reciting or uttering of any obscene songs, ballads or words etc. Mr. Vaz argues that they may all relate mostly to sexual morality and that if the scope of decency and morality are not to be restricted to some such things as are contained in Sections 292 to 294, I. P. C. which relate to common law offences, there is nothing that the Legislature cannot prevent under cover of decency and morality.

Whether the Constitution-makers had in mind the offences contemplated under Sections 292 to 294, I. P. C. when they used the terms 'decency or morality' in Article 19(2) or otherwise the real point for consideration is, what is the morality or decency in respect of which the Legislature can seek to impose reasonable

restrictions. Is it what the legislative mind considers moral or decent, or is it something which has to be determined by standards of universal acceptance and accord? The question as to what is morality in the interests of which reasonable restrictions can be imposed by the Legislature came up for consideration in -- 'Pram Nussanvanji v. State of Bombay' : AIR1951 Bom210 . That was a case which arose under the Bombay Prohibition Act. Sections 23(a) and (b) and 24(1), Bombay Prohibition Act were challenged before a Full Bench of the Bombay High Court which decided the case above referred to and held the impugned sections offended against Article 19(1)(a) of the Constitution, section 23(a) prohibits not merely soliciting the use of or the offering of any intoxicant, but also 'commending' any intoxicant and the contravention of this provision has been made penal under Section 75(a) of that Act. Chagla C. J. delivering the judgment of the Full Bench observes at page 221 as follows:

'Now the expression 'commend' is clearly very wide in its connotation. Any praise of liquor either by word of mouth or by writing would come within the mischief of this sub-section. Even an article by a medical man praising the qualities of alcohol and recommending its use in certain cases would fall within its purview. The Legislature can only impose restrictions upon the freedom of speech or expression in any law, which relate to libel, slander, defamation, contempt of court, or any matter which offends against decency or morality or which undermines the security of or tends to overthrow the state.

In our opinion, what is sought to be prevented here does not fall within any of the cases enumerated in Article 19(2). The Advocate-General attempted to argue that as according to the Legislature drinking was immoral, any recommendation, of a drink would offend against morality. In our opinion, the morality referred to in Article 19(a) is not the ad hoc morality created by the State Legislature. It is a morality which is accepted by all the world or at least throughout the length and breadth of India. It is absurd to suggest that when drinking is permissible in the majority of States in India, the mere commendation of a drink would constitute an encroachment upon morality. The Advocate-General has further argued that 'commend' in this sub-section means the advocacy of some act which is contrary to the provisions of the statute.

The mere praising of a drink by a person without that person asking his hearers to do something would not come within the expression used by the Legislature. We see no reason why a limited meaning should be given to the word, 'commend' other than its plain grammatical, meaning. In support of this provision, the Advocate-General relied on a decision of the Supreme Court in -- 'Gitlow v. New York', (1924) 268 US 652 (C). In that case, advocacy of criminal anarchy was constituted an offence and the contention was that it encroached upon freedom of speech and the Supreme Court negated that contention. What the Advocate General overlooks is the definition of criminal, anarchy in that statute. Criminal anarchy was defined as the doctrine that organised Government should be overthrown by force or violence or by assassination of the executive head or of any of the executive officials of Government or by unlawful means. It was the advocacy of this doctrine that was made penal.

We do not think that it is suggested that by a man praising drink he is advocating anything which is violent or subversive. Under Clause (b) of Section 23, every person is prohibited from inciting or encouraging any member of the public or any class of individuals or the public generally from committing any act which frustrates or defeats the provisions of the Act or any rule, regulation or order made thereunder. It is clear that the incitement or encouragement may be by speech or expression. An incitement or encouragement is not confined to committing a breach or contravention of any provision of the Act, but extends to frustrating or defeating the provision of the Act. In our opinion, this incitement or encouragement may extend to acts which are perfectly lawful and which have not been prohibited by the Prohibition Act. It would be clearly a violation of the right of freedom of speech and expression to prevent a person from advocating something which is lawful even though it may have the effect of frustrating or defeating the provisions of the statute.

The Advocate-General says that the Legislature is fully justified in prohibiting not only the direct contravention of the Act, but even the evasion of it. But this argument is of no avail because evasion itself has not been made an offence under that statute. What has been, made an offence is the incitement or the encouragement. The same considerations apply to Section 24(1)(a) to the extent

that it refers to commending, and to Clause (b) to the extent that it refers to evasion. What we have just said also applies to the undertaking asked for from the applicant for a permit under the proviso to Section 53 that he would not do anything which would have the effect of directly or indirectly defeating or frustrating the objects and purposes of the Act, and to similar conditions appearing in the forms of all permits.'

12. This Full Bench decision of the Bombay High Court was taken up on appeal before the Supreme Court and in 'State of Bombay v. F. N. Balsara', AIR 1951 SC 318 (D), Fazl Ali J. delivering the judgment observes as follows: 'The next group of sections which the High Court has held to be invalid is Sections 23(a) and 24(1) (a) in so far as they refer to 'commending' any intoxicants, Section 23(b) in its entirety and Section 24(1)(b) in so far as it refers to 'inciting or encouraging' any individual or class of individuals or the public generally 'to evade the provisions of any rule, regulation or order made thereunder or the conditions of any licence, etc.'. These provisions run as follows:

'23. No person shall:

(a) commend, solicit the use of, offer any intoxicant or hemp, or

(b) incite or encourage any member of the public or any class of individuals or the public generally to commit any act which frustrates or defeats the provisions of this Act, or any rule, regulation or order made thereunder or.....

24 (1) No person shall print or publish in any newspaper, news-sheet, book, leaflet, book or any other single or periodical publication or otherwise display or distribute any advertisement or other matter,--

(a) which commends, solicits the use of or offers any intoxicant or hemp, or

(b) which is calculated to encourage or incite any individual or class of individuals or the public generally to commit an offence under this Act, or to commit a breach of or to evade the provisions of any rule, regulation or order made thereunder or the conditions of any licence, permit, pass or authorisation granted thereunder.'

Sections 23(a) and 24(1)(a) in so far as they refer to 'commending' any intoxicant are said to conflict with the fundamental right guaranteed by Article 19(1)(a), namely, the right of freedom of speech and expression and there can be no doubt that the prohibition against 'commending' any intoxicant is a curtailment of the right guaranteed, and it can be supported only if it is saved by Clause (2) of Article 19 which as it stands at present, provides that: 'Nothing in Sub-clause (a) of Clause (1) shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to, libel, slander, defamation, contempt of court or any matters which offend against decency or morality or which undermines the security of, or tends to overthrow, the State.'

It seems to me that none of the conditions mentioned in Clause (2) applies to the present case, and therefore the provisions in question must be held to be void. Section 23(b) must also be held to be void, because the words 'incite' and 'encourage' are wide enough to include incitement or encouragement by words and speeches and also by acts. The words 'which frustrates or defeats the provisions of the Act or any rule, regulation or order made thereunder' are so wide and vague that it is difficult to define or limit their scope. I am therefore in agreement with the view of the High Court that this provision is invalid in its entirety. So far as Article 24(1)(b) is concerned, the judgment of the High Court in regard to it cannot be upheld. The learned counsel for the petitioner also conceded before us that he was not going to assail this provision,'

13. The observations which I have quoted from both the decisions referred to above lay down the principle which should guide in determining what is a reasonable restriction in the interests of morality. Applying the rulings in the above two decisions, I am of opinion that Section 49A, Madras City Police Act, in so far as it has the effect of abridging the right to freedom of speech and expression guaranteed by Article 19(1) of the Constitution and in so far as it cannot be brought within the scope of Article 19(2), cannot be said to be a reasonable restriction permitted by Article 19(2); for, it is obvious that, so long as horse-racing as well as wagering and betting on horse races are permissible within the race-course, it cannot be said that the giving of information in regard to acceptances for horse-races or similar other news described in Rule 3 of the Gaming Rules can be

an offence against morality which requires to be prohibited by reasonable restriction.

14. Even so, there is considerable force in the contention of the learned counsel for the petitioners that Section 49A, Madras City Police Act is also a violation of the right guaranteed to practise any profession, trade or business. By no stretch of imagination could this prohibition be brought within the scope of Sub-clause (6) of Article 19 of the Constitution. Section 49A of the Act does not relate to the profession or technical qualifications for practising any profession or carrying on any occupation, trade or business, and 'prima facie' Section 49A in so far as it prohibits the sale or the printing or publishing or distribution of the biweekly or other pamphlets involved in these petitions and which give news of acceptances for horse-races, etc., must be considered to be an encroachment on the right of any citizen to practise the profession, trade or calling in printing and publishing news.

15. A closer examination of Section 49A and the rules framed thereunder would reveal a very peculiar feature of the scope of the section. In the first place, as has already been referred to, not merely is the race club entitled to publish in any book or pamphlet all the information connected with horse-races and acceptances etc. but also any newspaper may publish similar information in regard to races within the Province of Madras. The only qualification with regard to the newspaper publishing such news is that it should come within the purview of the explanation to Sub-section (D) of Section 49A of the City Police Act. A general limitation that is placed against both the newspaper and the race club is that both of them can publish only such information as may be permitted by the rules made by the Provincial Government under Sub-section (2).

The information that may be permitted to be published by the race-club as well as by any newspaper of the kind coming within the explanation of Sub-section (1) of Section 49A has been set out in Rule 3 of the Madras City Police Gaming Rules. The scope of the section so far as publication of news about acceptances for horse-races by the race club or under its authority would seem to indicate that, while it will not be offending against morality or decency if all the news of the kind

set out in R. 3 were to be published within the precincts of such club or any race course connected therewith, it will amount to an offence against morality or decency necessitating the same to be prohibited, if the same news, as is contained in any book or pamphlet issued by the race club, is published outside the race club or the race course.

It will be readily seen that this amounts simply to set up two different standards of morality or decency. One standard of morality or decency, which is to obtain within the race course and another which is to obtain outside the precincts of the race club or the race course. It is inconceivable that the Constitution would have envisaged, when it vested the power in the State to impose reasonable restrictions in the interests of morality or decency on the exercise of the right to freedom of speech and expression, that the State should also have power to set up different standards of morality within different areas or spheres, separated by either a fence or a wall or by any other means. It passes comprehension as to how what is morality within the precincts of the race club or within the race course connected with the race club could cease to be such outside the race club or the race course.

16. It is learned from the learned State Prosecutor that the Madras Race Club, Guindy, is given a licence by the Government for the horse-races conducted by it and that, under the terms of the licence, the Government has banned all gambling except what is permitted by the terms and conditions set put in the licence. I am further told that the licence issued to the race club stipulates that all bets and horses must be placed only in certain specified places and not at all places within the enclosure of the race course itself, and that any betting at places other than those specified in the licence issued to the race club is made an offence. The argument advanced by the learned State Prosecutor in this connection is that, while racing, as such, has nothing to do with betting, betting or gaming, as it is defined in the City Police Act, is against morality and therefore the Government's justification to ban the same; but the fact remains that the state Government has licensed gaming.

It is then argued that licensing gaming is not making it moral. The illustration of licence to keep brothel-houses obtaining in some of the western countries has

been pressed into service by the learned state Prosecutor to show that, while houses of ill-fame where prostitution is licensed exist, it cannot tantamount to making prostitution moral and it cannot mean that the Government is not entitled to impose restrictions against prostitution. On this analogy, it is contended that Government or the Legislature was entitled to impose reasonable restrictions on gaming, and the mere fact that such gaming is licensed within a certain enclosure will not make it moral. This argument misses the real point. It is not so much that licensing or non-licensing makes a thing moral or otherwise, but that what is moral within a certain area cannot become immoral outside that area.

The learned State Prosecutor has also referred to the fact that laws against wagering or betting exist in other advanced countries of Europe and that wagering and betting have been made punishable under such laws. It may be so, but we are not concerned here with the question as to whether wagering or betting is made an offence rightly or wrongly in this country or in other countries. That I do not think is within the scope of the issue to be decided in the cases before me. The simple point before me is, even granting that wagering or betting is against morality, and there being no horse-races without wagering or betting in connection therewith, and the Government having made such betting or wagering permissible within certain enclosure and at specified places within the enclosure itself as specified in the licence, and having further permitted the publication of all news concerning the entire history and the performances of the horses taking part in the races either by the race club itself which conducts the races or by the newspapers of the type described in the Explanation to Section 49A, whether it is open to the Government or the Legislature in such circumstances, to prohibit publication of the very same or similar news about the horses and their history etc. outside the race course.

The idea underlying this attitude seems to be that, while the publication of news on horse-races within the race course is not injurious to public morals, it can be considered by the Legislature to be injurious if the same is published outside the race course. Is such a view of the Legislature warranted by the Constitution? There being absolutely no restriction for entry into the race course to any person who conforms to the rules and who pays the necessary fee levied for such entry,

and there being also no restriction as to the class or type, or status or position of the people that enter the race course for purposes of either watching the races as mere sport or for wagering or betting thereon even though it be at specified sports (spaces?) within the enclosure -- it is difficult to appreciate as to how news with regard to horse races and all the other details such as are set out in R. 3 of the Gaming rules being published within the race course stands on a different footing from the same identical news being published outside the race course.

That is really the test to see now far the section is in accord with the rights assured under the Constitution. It cannot be said by any stretch of imagination that every one of the large body of the people that enter the race course is differently situated or differently equipped mentally and morally from those who do not enter the race course, in order to justify that a given set of news or information given to them does not prove to be injurious, while the same set of news given outside the enclosure would prove to be injurious and unhealthy from the morality point of view. That there should be such a division of morality and setting up of different standards of morality, the divisions and standards being interposed by the erection of a wall or a fence, as seems to be the case on a proper understanding of Section 49A cannot be said to be reasonable so as to make it come within the purview of reasonable restrictions contemplated by Article 19(2) of the Constitution in the interests of decency or morality.

17. Further, it is stated by the learned State Prosecutor that the official race book containing all the news that can be published under Rule 3 of the Madras City Felice Gaming Rules of 1949 is always available even two or three days prior to the actual commencement of the races and there is no restriction to the sale of any number of copies of such official race book within the precincts of the race course. If such be the case, there is nothing that prevents the purchase within the race course by anyone who enters the race course of as large, a number of copies of this official race book as possible and making them available to the public outside the race course, either some time prior to the races, or actually on the day of the races, and there also seems to be no objection or prohibition to these copies of the official race book being distributed among the public outside, once they have been purchased within the race course, either free of cost or at a higher or a

lower price as the case may be.

In such a situation it is difficult to understand how the object underlying Section 49A of the Act, namely, prohibiting the publication of news regarding horse races or any information which purports to aid or facilitate wagering and betting on horse-races, is achieved. Besides, if the official race book published by the race club could be available to any member of the general public in the manner stated above, though he may not be a member of the race club, or may not choose to enter the race course, what then is the rationale of prohibiting the same information, as contained in the official race book, being published by any agency other than the race club or other than the newspaper coming within the Explanation to Sub-clause (1) of Section 49A? No answer is available to this question from the learned State Prosecutor supporting the validity of the impugned section of the City Police Act.

18. It is, therefore, argued by the learned counsel for the petitioners that the language employed by Section 49A of the Act sets up a discrimination between the citizens exercising the right of freedom of speech and expression. In so far as, under that section, any newspaper coming within the Explanation to Clause (1) thereto and the race club itself which conducts the races can publish all the news such as is set out in Rule 3 of the Gaming Rules, it prohibits other citizens like the petitioners, who are also publishers and entitled to exercise the same right of freedom of expression and speech, from publishing the same identical news. Mr. Nambiar has placed before me the issues of the Hindu, one of the leading dailies of India, dated 21st and 22nd November 1953 as also the issue of the same daily which goes under the name of 'Sport and Pastime' of the same dates.

A perusal of the columns in these issues of the Hindu relating to news regarding racing and the acceptances connected therewith shows that the news or information published in the offending publications is identical with what is published in the said issues of the Hindu and they contain nothing more and nothing less than what is contained in the said dailies. It is stated that other newspapers, like the 'Madras Mail', the 'Indian Express' also publish exactly the same news in their columns, under the heading 'racing' as the offending

publications have done. It is also pointed out that news appearing in the columns of these dailies as also in the offending publications strictly conforms to the items of news made permissible under Rule 3 of the Madras City Police Gaming rules. Such being the case, the question arises as to how the publication of the same identical news by one set of citizens becomes an offence against morality and therefore is sought to be prohibited and does not become such an offence, when it is published by other citizens.

If this is not discrimination between one citizen & another, to all of whom the right to freedom of speech, and expression is secured under Article 19(1)(a) and every one of whom is entitled to equality before the law or equal protection of the laws within the territory of India, it is difficult to see what else could be called discrimination. If those Interested in reading the columns of 'the Hindu' or 'the Mail' or the 'Indian Express' on horse racing are not contaminated, it is not intelligible as to how those people, who are similarly interested in horse racing, would become contaminated if they are to read the offending publications. In order to justify the legislature permitting the one and prohibiting the other and thereby discriminating between one publisher and another, there must be some substantial and acceptable reasons which would come under the scope of a reasonable classification of publishers. No such reasons have been advanced on behalf of the State to substantiate such discrimination and, in the nature of things, there can obviously be no justification in a matter like this to discriminate between two sets of publishers, who publish the same identical news & which news is read by more or less the same set of people, namely, those who are interested in horse-racing. On this ground also, it has been validly urged that Section 49A, Madras City Police Act offends against Article 14 of the Constitution and there is every force in this contention.

19. From another point of view also, any classification to be reasonable must have regard to the Objects to be secured by such classification. The object in the present case being discouragement of wagering or betting on horse-races, this object would hardly be achieved by permitting one set of newspapers publishing news about horses and horse races and prohibiting another set of publishers from publishing the same identical news, so long as there is nothing to prevent the

interested parties reading the news that is available to them in the journals which are not within the prohibition. What the offending publications seem to have done is only to furnish to the interested persons in a handy form the very same news that is made available in newspapers which are perhaps not easy to handle or convenient to carry. It is, therefore, obvious that, so long as the information about horses and their past history and performances is available without any difficulty to any one who seeks the same from the permitted class of newspapers, it cannot, by any means, be said that the object of preventing or discouraging wagering and betting is achieved by merely preventing the presentation of that news in a more handy and convenient form.

There is also a further argument advanced by the learned counsel for the petitioners that, so long, as horse races are permitted and wagering or betting is also permitted within the race enclosure, there happens to be consequently a large body of persons interested in racing and betting thereon. In order that the large body of this public may be served well and catered to efficiently, in their pursuit of either horse racing as sport or pastime, or as gaming, the publication of correct news about the horses and their past history etc., should be considered to be in the interests of that public, rather than proving detrimental to their interests. Whatever might be the merits of this argument, it only illustrates the point that the classification of newspapers that is sought to be made by virtue of Clause (1) of Section 49A, Madras City Police Act cannot be said to be conceived with a view to promote the objects sought to be secured by the enactment; much less can it be said to be consistent with the objects underlying the enactment.

20. On an ultimate analysis of Section 49A of the Act, it would appear that the several classifications that are found in this section would all be found to be in derogation of the rights secured to the citizens under Article 19(1)(a) of the Constitution and that the section is, not saved by the doctrine of reasonable restrictions permissible under Article 19(2). In the first instance, it will be seen that a differentiation is made between races within the State of Madras and races outside the State of Madras, and news about races outside the state of Madras is permissible and could be furnished by any newspaper. How the publication of news about races outside the Province of Madras does, not facilitate wagering or

betting on horse-races, is not understandable so long as those newspapers are read by persons who are interested in horseraces. Distinction is sought to be made. In the, second place, between news published within the race course and news published outside the racecourse.' Again, it is not intelligible how the object underlying the section is sought to be achieved by merely prohibiting publication of information about horses and horse races outside the race club or the race enclosure.

In the third place, a further distinction is sought to be made between news exclusively devoted to races and news which is not so exclusively devoted. While the impugned section permits publication of news on horse races mixed with other news or comments on news, it prohibits news that relates exclusively to horse races and the history of horses and other performances etc. It is not explicable as to how the object of discouraging betting on horse races is sought to be achieved by this process of differentiation. In the fourth place a further distinction is sought to be made between newspapers which come within the scope of the Explanation to Sub-section (1) of Section 43-A and those which fall outside the scope of that explanation. As has already been pointed out it is also not intelligible as to how the object of prevention of facilities and aids to betting or wagering by the publication of news or information is achieved by allowing newspapers evidently of a much larger circulation to cater to such needs, and by preventing publishers of smaller circulation from publishing the very same identical news.

Therefore, it must be stated that the discrimination that is evident in Section 49A of the City Police Act is not based on any reasonable classification; much less could it be said that any such classification as is evidenced by that section has any regard to the objects underlying that section. In this connection, it will be appropriate to refer to the observations made by Fazl Ali J. in -- AIR 1951 SC 318 (D) which are to the following effect:

'I now come to Section 39 of the Act which has been impugned on the ground that it offends against Article 14 of the Constitution which states that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.'

The meaning and scope of this Article has been fully discussed in the case of -- 'Charanjitlal v. Union of India' : [1950]1SCR869 and the principles laid down in that case may be summarised as follows:

1. The presumption is always in favour of the constitutionality of an enactment, since it must be assumed that the Legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and its discriminations are based on adequate grounds.
2. The presumption may be rebutted in certain cases by showing that on the face of the statute, there is no classification at all and no difference peculiar to any individual or class and not applicable to any other individual or class, and yet the law hits only a particular individual or class.
3. The principle of equality does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position and the varying needs of different classes of persons often require separate treatment.
4. The principle does not take away from the State the power of classifying persons for legitimate purposes.
5. Every classification is in some degree likely to produce some inequality, and mere production of inequality is not enough.
6. If a law deals equally with members of a well defined class, it is not obnoxious and it is not open to the charge of denial of equal protection on the ground that it has no application to other persons.
7. While reasonable classification is permissible, such classification must be based upon some real and substantial distinction bearing a reasonable and just relation to the object sought to be attained and the classification cannot be made arbitrarily and without any substantial basis.'

In the light of these observations, I must hold once again that Section 49A, Madras City Police Act offends against Article 14 of the Constitution.

21. The learned Presidency Magistrate, however, has held so far as the offending publications in the revision cases are concerned, that they are not 'newspapers' coming within the scope of the explanation to Clause (1) of Section 49A of the City Police Act. It may be that, in the matter of their size or form or even in the matter of their circulation, each one of these offending publications may not come upto the level of any newspaper, such as 'the Hindu', 'the Mail' or 'the Indian Express' or any other leading daily of this country. There is, however, no material before me to assess the relative position of these daily journals and the offending publications. But, in so far as the Explanation to Section 49A(1) itself is concerned, in my view, the learned Presidency Magistrate is not correct in dismissing these offending publications as not falling within the meaning of the said Explanation.

These publications seem to be periodical works which publish news or comments on such news besides news on racing. They are published at intervals not exceeding one week and they are registered under the Press Act. So far, these publications comply with the requirements of the Explanation. But, on the point as to whether or not these publications are works solely or mainly concerned with races, the learned Magistrate has come to the conclusion that they are concerned mainly or solely with races. An examination of the offending publications, however, does not show, as a matter of fact, that these publications can straightaway be said to be solely or mainly concerned only with races. A major portion of each one of these offending publications does contain news other than that relating to horse-races or the acceptances in connection therewith, however scrappy that might be. Whether that variety of news serves the same purpose as the other daily newspapers or otherwise is a different matter and that cannot enter into any consideration of the question as to whether these offending publications are strictly within the scope of the Explanation to Sub-section (I) of Section 49A.

For all purposes of the Explanation, they do not seem to be outside the scope of the requirements that have to be satisfied in order that these publications could be deemed 'newspapers'. This applies also to the publication that is involved in the

petition for quashing the proceedings before the Third Presidency Magistrate, for, that publication, namely 'The Original Vel Sporting News' stands, perhaps, on a much better footing than the other offending publications. The evidence on behalf of the prosecution in these cases does not seem to be of much value to show whether the offending publications are 'newspapers' or not. All the offending publications are registered under the Press Act and the editors and publishers have declared themselves before the relevant authority and their publications have been given registration numbers.

The only reason given by the prosecution for the seizure of these offending publications appears to be that the concerned officer saw in these publications tips on horses. But his evidence does not go to prove as to how exactly the information contained in these offending publications facilitates or otherwise aids betting or wagering on horse-races. The Sub-Inspector has betrayed gross ignorance of relevant facts which have a bearing on the charge which the petitioners are called upon to meet. The learned Magistrate also has not given any finding as to how exactly the information about these horses and their past history, pedigree, antecedents, performances etc., facilitates wagering or betting any more than they facilitate the interest of those who are concerned with races as a pastime and purely from the sports point of view.

22. It is next argued by Mr. M. K. Nambiar that the provision in Section 49A which vests power in the Provincial or the state Governments to permit, by rules, only such information and is prescribed in the rules framed by the Government under the rule-making power, is again an infringement or abridgment of the right secured to the citizens to freedom of speech and expression under Article 19(1)(a). It has to be noted that Section 49A, Madras City Police Act does not provide as to what could be published by the Race-Club or by the newspapers but only assigns this power to prescribe to the State Government, under rules to be framed by them. Apart from the fact whether such a delegation of the power to the State Government is permissible or not, the point that arises for consideration is whether the exercise of such a power to permit or not to permit by such rules as the Government may think fit any publication of news regarding horse races, is within the ambit of the constitutional propriety or permissibility envisaged under Article

19(2) of the Constitution.

The idea underlying this right of the Government to permit or not to permit the publication of news regarding horse-races and acceptances in connection therewith is nothing different from that which is involved in the right of pre-censorship of news by the executive authority. It has been held by various decisions of this court as also by the Supreme Court that pre-censorship is not consistent with the exercise of the fundamental right to freedom of speech and expression guaranteed under the Constitution and that where the reasonableness of restriction is made to depend upon what is to be permitted or not by the executive authority, it will amount to a negation of the right to freedom of speech and expression. In --*Ananthakrishnan v. Madras State*', AIR 1952 Mad 895 (P), the learned Chief Justice has observed at page 403 that 'any system of permits which eventually depended upon the discretion of executive authority would be bad when the system curtailed any fundamental right'. At page 407, Venkatarama Aiyar J. after referring to the statement of the law by Blackstone in his Commentaries on the freedom of speech as conceived under the English law, observes as follows:

'Thus freedom of speech and freedom of the Press came to be understood as meaning absence of previous restraint or censorship. Vide Dicey's Law of the Constitution (9th Edition, Chap. 6). When amendment No. 1 provided for freedom of speech and freedom of Press it merely embodied this principle which had been well settled in England and American courts accordingly construed the first amendment and the due process clause in the 14th Amendment as requiring that there should be no previous restraint or censorship. Vide -- '*Near v. Minnesota Edreal Oilson*', (1931) 283 US 697(G); '*Lovel v. Griffin*', (1938) 303 US 444 (H); -- '*Schneider v. Irvington*', (1939) 308 US 147 (I) and -- '*Cantwell v. Connecticut*', (1940) 310 US 296 (J).'

Again in -- '*Ramakrishniah v. President Dt. Boara, Nellore*' : AIR 1952 Mad 253 the learned Chief Justice observes as follows:

'It is well-established that the exercise of any of the fundamental rights like the right of free speech, right of freedom of religion or the right of freedom of association cannot be made subject to the discretionary control of administrative

or executive authority which can grant or withhold permission to exercise such right at its discretion.'

In -- 'Raghubir Singh v. Court of Wards, Ajmere' : [1953]4SCR1049 the observations made by the Supreme Court at p. 375 are also quite apposite and apply to the facts of the present cases. Therefore, in so far as the governing factor in regard to publication for sale of any book or pamphlet containing news or information regarding horse races, is what could be permitted or not by the executive authority under its rule-making power, it must be held that it amounts to a previous restraint on the exercise of the freedom of speech and expression guaranteed by the Constitution and is, therefore, illegal and cannot be upheld.

23. The learned State Prosecutor, however, has endeavoured to show that gaming is against morality and he relied upon a decision in 'In re Second Grade Pleader', AIR 1919 Mad 777 (M) to show that if a person is convicted for the offence of wagering or keeping a common gaming-house, the offence for which he is convicted involves moral turpitude. He, therefore, deduces that the offence of wagering is an offence against morality and therefore the State Legislature is entitled to impose reasonable restrictions in the interests of morality. I do not think that the decision quoted by the learned State Prosecutor has any bearing on the points that have arisen for consideration in these revision cases and the petition for quashing, and since I feel that the decision cited by the learned State Prosecutor is not relevant to the issue that has to be decided in these cases, it is not necessary for me to discuss the same.

The learned State Prosecutor has also argued that, while Section 49A, Madras City Police Act, without the provisos could alone be construed to be an absolute prohibition against the publication of all news in any shape or form relating to horse races or purporting to aid or facilitate betting and wagering, it cannot be suggested that, in the light of the provisos contained in that section, there is any such total ban on publication of news and that the provisos have the effect of imposing only a reasonable restriction on the publication of the news which the Legislature has thought to be against the interests of morality. This argument only begs the question and has already been dealt with in the foregoing paragraphs of

this judgment and it only remains to be pointed out that the argument is without substance the moment it is considered that this very Section 49A of the City Police Act permits all newspapers to publish all news about horse-races both in the State of Madras and outside the State and what it seeks to prohibit, far from achieving the object underlying the prohibition, only abridges the rights to the citizens guaranteed to them under Article 19(1)(a) and 19(1)(g) of the Constitution.

24. For the reasons I have stated above, I am of the opinion that the proceedings now pending before the learned Third Presidency Magistrate against the petitioner who is said to have sold the 'Original Vel Sporting News' are not sustainable and they deserve to be quashed. Even so, the convictions of the other petitioners in the criminal revision cases for the alleged offences of having sold the booklets marked as exhibits in the cases cannot be upheld and they also deserve to be set aside. Both the pending proceedings and the convictions and the sentences are hereby respectively quashed and set aside.

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