

IN THE SUPREME COURT OF MAURITIUS

In the matter of:-

SMS PARIAZ LTD, having its registered office at 303-305, 2nd floor, Chancery House, Lislet Geoffroy Street, Port Louis, as represented by its director of same address.

APPLICANT

v/s

THE GAMBLING REGULATORY AUTHORITY, service to be effected at its office at 12th floor, Newton Tower, Sir William Newton Street, Port Louis

RESPONDENT

And in the matter of:-
EX-PARTE:-

SMS PARIAZ LTD, having its registered office at 303-305, 2nd floor, Chancery House, Lislet Geoffroy Street, Port Louis, as represented by its director of same address

APPLICANT

MOTION PAPER

Applicant moves this Honourable Court for:-

A. An Order granting Applicant LEAVE to apply to this Honourable Court for the judicial review of the decision and decision making process of the Respondent:-

- (i) regarding and relating to the decision of Respondent to issue two Directives both issued on 17th March 2025 under Section 100 (1) of the Gambling Regularity Authority Act and conveyed to the Applicant by way of two letters both dated the 17March 2025 bearing reference GRA/LSMS/01/25 and GRA/FOB011/02/25 respectively, according to which Respondent allegedly concluded that the license of the Applicant to conduct fixed odds betting on local races and football matches through remote communication (SMS) could not be amended to extend the

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scope of its activities and the letters of the Respondent dated 06 April 2020, 07 July 2020, 31 July 2020 and 08 January 2024 approving Applicant's said requests for the said extension, are allegedly null and void to the extent that the Respondent had no power to broaden the scope of Applicant activities beyond the scope of its license, and

- (ii) directing the Applicant to refrain from conducting any activity relating to the conduct of fixed odds betting on horse races and football matches taking place outside Mauritius through remote communication,

in order to have the said decisions quashed reviewed, amended, reversed, set aside or otherwise dealt with according to what may appear to the Court to be lawful in the circumstances and this for the reasons set out above.

- B. For an Order of *certiorari* calling upon Respondent to bring up all its records relating to its decision and decision making process to:-

- (i) regarding and relating to the decision of Respondent to issue two Directives both issued on 17th March 2025 under Section 100 (1) of the Gambling Regularity Authority Act and conveyed to the Applicant by way of two letters both dated the 17th March 2025 bearing reference GRA/LSMS/01/25 and GRA/FOB011/02/25 respectively, according to which Respondent allegedly concluded that the license of the Applicant to conduct fixed odds betting on local races and football matches through remote communication (SMS) could not be amended to extend the scope of its activities and the letters of the Respondent dated 06 April 2020, 07 July 2020, 31 July 2020 and 08 January 2024 approving Applicant's said requests for the said extension, are allegedly null and void to the extent that the Respondent had no power to broaden the scope of Applicant activities beyond the scope of its license, and
- (ii) directing the Applicant to refrain from conducting any activity relating to the conduct of fixed odds betting on horse races and football matches taking place outside Mauritius through remote communication,

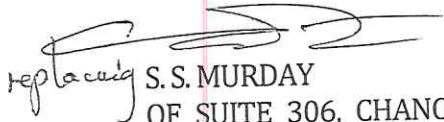
in order to have the said decisions quashed reviewed, amended, reversed, set aside or otherwise dealt with according to what may appear to the Court to be lawful in the circumstances and this for the reasons set out above.

- C. an Order granting the STAY of execution of the two Directives both dated on 17th March 2025 issued by the Respondent pursuant to Section 100 (1) of the Gambling Regularity Authority Act and conveyed to the Applicant by way of two letters both dated the 17th March 2025 bearing reference GRA/LSMS/01/25 and GRA/FOB011/02/25 respectively, according to which Respondent allegedly concluded that the license of the Applicant to conduct fixed odds betting on local races and football matches through remote communication (SMS) could not be allegedly amended to extend the scope of its activities and the letters of the Respondent dated 06 April 2020, 07 July 2020, 31 July 2020 and 08 January 2024 approving Applicant's requests for the said extension, are allegedly null and void to the extent that the Respondent had no power to broaden the scope of Applicant activities beyond the scope of its license and directing the Applicant to refrain from conducting any activity relating to the conduct of fixed odds betting on horse races and football matches taking place outside Mauritius through remote communication pending the determination of the present Judicial Review application.
- D. For such other Order/Orders as the justice of the case may call for.

For the reasons fully set forth in the annexed affidavit and Statement.

Under all legal reservations.

Dated at Port-Louis, this 20th day of March 2025


S.S. MURDAY

OF SUITE 306, CHANCERY HOUSE L. GEOFFROY STS PORT-
LOUIS

APPLICANT'S ATTORNEY INSTRUCTING COUNSEL Z
MOHAMED AND NOOR HUSSENEE

IN THE SUPREME COURT OF MAURITIUS

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APPLICANT

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THE GAMBLING REGULATORY AUTHORITY, service to be effected at its office at 12th floor, Newton Tower, Sir William Newton Street, Port Louis.

RESPONDENT

And in the matter of:-

Ex-parte:-

SMS PARIAZ LTD, having its registered office at 303-305, 2nd floor, Chancery House, Lislet Geoffroy Street, Port Louis, as represented by its director of same address.

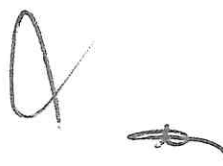
APPLICANT

I, Pazany THANDARAYAN, residing at Avenue Lotus, Amitié, Riviere du Rempart, holder of National Identity Card No. T210170110078B, **MAKE SOLEMN AFFIRMATION AS A HINDU AND SAY AS FOLLOWS THAT:-**

1. I am a Director of the Applicant and I have been duly authorized to solemnly affirm the present affidavit on its behalf. I hereby attached a copy of the board resolution of the Applicant authorising me to affirm the present affidavit on its behalf, marked as **Annex A**.
2. The Applicant is a private limited company duly incorporated under the laws of Mauritius and is licensed by the Respondent under Section 44(4) of the Gambling Regulatory Authority Act (the "Act" hereinafter) to operate as a Bookmaker conducting amongst others, fixed odds betting through remote communication on local horseracing, on foreign horse races and football matches played outside Mauritius. Copies of the licences issued to the Applicant by the Respondent are hereto annexed and are marked as **Annex B**

A. Facts of the case

3. Pursuant to the Act, the Respondent is a statutory body empowered to regulate gambling activities in Mauritius, including and without limitation to, betting on local horse racing and any sporting event which includes horse race or football league



which takes place outside Mauritius and is also responsible for ensuring that gambling in Mauritius is conducted in a fair, legal and transparent manner.

4. As per the Act, the Respondent is administered and managed by a Board composed of the following members:
 - A. a Chairperson;
 - B. a Vice-Chairperson;
 - C. a representative of the Prime Minister's Office;
 - D. a representative of the Attorney-General's Office;
 - E. a representative of the Ministry responsible for the subject of Finance;
 - F. a representative of the Ministry responsible for the subject of Tourism;
 - G. a representative of the Commissioner of Police; and
 - H. 3 other members having adequate experience in economics, accountancy, law, scientific or business administration.
5. Applicant avers that an amendment was brought to the definition of Sporting Event in section 2 of the Act through the Finance (Miscellaneous Provisions) Act 2016 pursuant to which Sporting Event was defined as meaning horse race, football league, cricket league or other sporting event as may be approved by the Board of Respondent which takes place outside Mauritius, or such other sporting event as may be prescribed.
6. Applicant avers that an amendment was brought to Section 44(4) of the Act, which is the governing and regulating section of its existing license, through the Finance (Miscellaneous Provisions) Act 2017 whereby the words "*local races*" and "*outside the racecourse*" appearing in that section were deleted such that the scope and ambit of its betting activities under section 44(4) are now no longer restricted and limited under its licence to local horse races by operation of the law.
7. Applicant avers that the above 2 amendments, firstly made by the Finance Act 2016 to the definition of the term Sporting Event in section 2 of the Act and secondly by the Finance Act 2017 to section 44(4) of the Act, resulted in that when both the amended sections 2 and 44(4) of the Act are read together, it means that the scope and ambit of the betting activities of the Applicant under section 44(4) are no longer restricted and limited to local horse racing but instead when reading and interpreting the provisions of the definition section in section 2 of the Act more precisely the terms "*Bookmaker*", "*event or contingency*" and most importantly the term "*Sporting Event*", this means that the legislator has in its wisdom deemed it fit to broaden and extend the scope and ambit of the betting activities of the Applicant under its existing license under section 44(4) of the Act to also include foreign horse racing and football league matches which take place outside Mauritius.



8. Applicant avers that following the above 2 amendments made by the Finance Act 2016 and 2017 to sections 2 and 44(4) of the Act respectively, in its capacity of a Bookmaker offering fixed odds betting through remote communication and holder of an existing license under Section 44(4), the Applicant made a written application in the months of October and November 2017 to the Respondent for the latter to broaden and extend the scope and ambit of its betting activities under its license under Section 44(4) to also cover and conduct fixed odd betting on foreign horse races which takes place outside Mauritius through remote communication in addition to the existing fixed odd betting on local horse races.
9. Applicant avers that the Respondent through a letter dated 10 November 2017 (**Annex C**) approved the said request of the Applicant to extend its betting activities under its existing licence under section 44(4) and authorised Applicant to also conduct fixed odd betting on foreign horse races through remote communication in addition to the existing fixed odd betting on local horse races.
10. Applicant avers that a further amendment was again brought to the definition of 'Sporting Event' in section 2 of the Act through the Finance (Miscellaneous Provisions) Act 2020 pursuant to which 'Sporting Event' was defined as meaning a horse race or football league which takes place outside Mauritius.
11. Applicant avers that following the said amendments to the definition of 'Sporting Event' in 2020 and taking into consideration the previous amendment already brought to section 44(4) of the Act through the Finance Act 2017, in its capacity of a Bookmaker offering fixed odds betting through remote communication and holder of an existing license under Section 44(4), Applicant made a written application on 9 November 2023 to the Respondent for the latter to extend the scope and ambit of its betting activities under its license under section 44(4) of the Act to also cover and conduct fixed odd betting **on football matches played outside Mauritius** (emphasis added) through remote communication in addition to the existing fixed odd betting on local horse races and foreign horse races.
12. Applicant avers that the Respondent through a letter dated 8 January 2024 (**Annex D**) has approved the request of the Applicant to extend its betting activities under its existing licence under section 44(4) of the Act and authorised Applicant to conduct fixed odd betting on football matches played outside Mauritius through remote communication in addition to the existing fixed odd betting on local horse races and foreign horse races.
13. Applicant avers that following the Respondent's written approval and authorisation obtained in 2017 and 2024 respectively to extend the betting activities under its existing Bookmaker licence under section 44(4) of the Act, it has invested massively

in terms of personnel and logistics to be able to operate and conduct fixed odds betting on foreign horse racing and foreign football in addition to local horse racing.

14. The Applicant avers and stand advised that the Respondent being a statutory body established under an Act of Parliament, its decisions taken by its Board in 2017 and 2024 to approve and authorise the extension of the betting activities of the Applicant under its existing licence under section 44(4) of the Act, were decisions taken in all good faith and in legality. The Applicant contends that there is the presumption of regularity and the presumption of the lawful exercise of statutory power which applies to the said decisions and the Applicant has acquired rights based thereon since it has been already commercially operating these approved betting activities since many years.
15. The Applicant avers that Respondent has issued a directive (**Annex E**) dated 17 March 2025 under Section 100 of the Act directing the Applicant to immediately stop any activity relating to the conduct of **fixed odds betting on horse races taking place outside Mauritius** through remote communication on the ground that the Respondent's previous decision to approve and authorise the extension of Applicant's betting activities under its existing licence under section 44(4) of the Act to additionally include foreign horse racing is allegedly null and void and that the Respondent had no power to broaden and extend the scope of the Applicant's activities beyond the scope of its licence.
16. The Applicant avers that Respondent has issued a second directive (**Annex F**) dated 17 March 2025 under section 100 of the Act directing the Applicant to immediately stop any activity relating to the conduct of fixed odds betting **on football matches taking place outside Mauritius** through remote communication on the ground that the Respondent's previous decision to approve and authorise the extension of Applicant's betting activities under its existing licence under section 44(4) of the Act to additionally include foreign football matches is allegedly null and void and that the Respondent had no power to broaden and extend the scope of the Applicant activities beyond the scope of its licence.

B. GROUNDS FOR JUDICIAL REVIEW

(i) Illegality of the decision of the Respondent

17. The Applicant contends that Respondent is being oblivious of its own statutory powers under section 7(1)(h) of the Act which provides that its Board has the statutory powers to approve any event or contingency on which betting is to be conducted.

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18. The Applicant contends that the Respondent does not have the power and authority to amend the conditions of the Applicant's licence under section 44(4) of the Act which are in line with the Act and to revoke its own previous decisions of 2017 and 2024 granting the extension to the scope of the betting activities under the licences of the Applicant which were perfectly legal.
19. The Applicant avers that the Respondent is now already *functus officio* concerning its decision making process and decision making powers in relation to its 2 previous decisions in *lite* made in 2017 and 2024 which now bear the stamp of finality and the Respondent has no legal right and power to now review and revisit its 2 previous decisions.
20. The Applicant also contends that the Respondent is being oblivious to the legislative changes and amendments the legislator had deemed fit to bring to the definition of 'Sporting Event' respectively through the Finance Act of 2016 and 2020 and to section 44(4) of the Act through the Finance Act 2017 which by operation of the law, made it possible for the Applicant to legally make a request to extend the scope of its betting activities under its existing license under section 44(4) of the Act so as to extend it to cover foreign horse races and foreign football matches and the Respondent's previous decisions to approve and authorise the extension of the betting activities of Applicant at that time, was perfectly legal and its decision making process was based on the amendments brought to the Act through the Finance Act of 2016, 2017 and 2020 respectively.
21. The Applicant avers that, based on the amendments made to the definition of 'Sporting Event' in the Finance Acts 2016 and 2020 respectively and also to the amendments brought to section 44(4) of the Act through the Finance Act 2017, both previous decisions of the Respondent to approve and authorise the Applicant to extend and broaden the scope of its betting activities to foreign horse races in 2017 and foreign football matches in 2024 are perfectly legal as it was done according to the amendments made to the definition of 'Sporting Event' on which a bookmaker may offer fixed odds betting. There was therefore no need for the Applicant to apply for a separate license as the extension of the scope of the betting activities to foreign horse races in 2017 and foreign football matches in 2024 operated as a matter of law.
22. The Applicant avers that by virtue of the amendment to section 44(4) of the Act through the Finance Act 2017, the scope and ambit of the Applicant's betting activities under its existing license under section 44(4) were no longer restricted and limited under its licence to local horse races.
23. The Applicant therefore contends that the two afore-mentioned Directives issued by the Respondent under section 100 of the Act are illegal, *ultra vires* and inconsistent with the other provisions of the Act and in effect means that the Respondent has had



recourse to the backdoor use of the mechanism of a Directive issued under section 100 of the Act to unlawfully review, revisit and revoke its own previous board decisions made in 2017 and 2024 respectively, without any prior fundamental mistakes of facts having been invoked, adduced, proved or established on record before the Board of the Respondent.

24. The Applicant stands advised that the scope of a Directive to be validly issued under section 100 of the Act by the Respondent, is limited to directing a licensee as to the manner to conduct its day-to-day activities and business so as to be compliant with the provisions of the Act. However, in the present circumstances, the two Directives issued will instead have the drastic practical effect of simply closing down the business of the Applicant as without the two betting activities mentioned in the two Directives, the whole of its business would not be commercially viable and all this without any blame that can be laid at the door of the Applicant since it has committed absolutely no breaches of the Act.

25. The Applicant also stands advised that the drastic practical effect of the two Directives issued by the Respondent under section 100 of the Act is a disguised unlawful way and means for the Respondent to take disciplinary sanctions against the Applicant leading to the closing down of the business of the Applicant by bypassing and without having recourse to the proper prescribed procedure laid down under section 99 of the Act in relation to disciplinary sanctions and therefore depriving the Applicant of the fundamental statutory procedural safeguards provided by the due process of the law in cases of disciplinary sanctions set out under section 99 of the Act.

(i) Unreasonableness of the decision of the Respondent, breach of legitimate expectation of Applicant and breach of natural justice

26. The Applicant avers that it is clear that the Respondent's Board has erred and lingered under a mistake as to the interpretation of the law namely the amendments made to the definition of '*Sporting Event*' made in the Finance Act 2016 and 2020 and the amendment to section 44(4) of the Act in the Finance Act 2017 instead of any fundamental mistakes of facts established on records which could have vitiated its previous Board decisions and warranted a valid and lawful reviewing or revisiting its own previous Board decisions of 2017 and 2024.

27. The Applicant stands advised that the two afore-mentioned Directives are against the ordinary principles of fairness, due process of the law and natural justice inasmuch as Applicant was not given the opportunity to be heard and to make legal representations before any such drastic decision could be taken by the Respondent, not only affecting the Applicant but also the livelihood of some 300 employees of the Applicant.

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28. The Applicant also avers that the Directives are against its clearly established legitimate expectation and its acquired rights since it has been commercially exploiting these two betting activities since many years.
29. The Applicant verily believes that the Directives are motivated by ill will with a view of driving the Applicant out of business.
30. The Applicant also contends that the Respondent has established no legal basis to review and revisit its previous perfectly valid and legal decisions respectively taken eight and two years ago.
31. The Applicant avers that the ordinary principles of fairness in administrative law such as respecting the Applicant's right to natural justice namely, the right to be heard and to make legal representations, the legitimate expectation of the Applicant and the acquired rights of the Applicant over the years, have not been respected by the Respondent while issuing the two Directives.

GROUND FOR STAY OF EXECUTION OF ORDERS AND INTERIM MEASURES

32. The Applicant avers that it has been operation since 2008 and has in its employment some 300 staff members. The said employees of the Applicant run the risk of becoming redundant if the 2 Directives of the Respondent are enforced and applied. Furthermore, the implementation of the two Directives would mean that Applicant is no longer a viable commercial concern.
33. The Applicant avers that it contributes to the government coffers in the form of licences, betting taxes and levies that it pays annually and the 2 Directives would lead to the closing down of the business of the Applicant. Applicant estimates that its contribution in terms of annual taxes and licences amount to around Rs 150,000,000/-
34. The Applicant avers that since its coming into operation in 2008 as a Bookmaker in the betting market, it has over the years built up a strong goodwill and reputation amongst its clients, a solid portfolio of loyal clients and a '*fonds de commerce*' which it would end up losing. Applicant also runs the risk of losing irremediably its share of the Mauritian betting market for good if the 2 Directives are implemented.
35. The Applicant avers that the implementation of the 2 Directives would entail irreparable financial prejudice to the Applicant which cannot be compensated in damages or monetary terms.

V



36. Applicant avers that for the reasons stated above, the balance of convenience lies clearly in its favour and the operation of the afore-mentioned 2 Directives of the Respondent ought to be restrained from coming into effect pending the hearing and determination of the present matter.

C. **PRAYERS AND CONCLUSION**

37. Applicant therefore prays as follows:-

A. An Order granting Applicant LEAVE to apply to this Honourable Court for the judicial review of the decision and decision making process of the Respondent:-

- (i) regarding and relating to the decision of Respondent to issue two Directives both issued on 17th March 2025 under Section 100 (1) of the Gambling Regularity Authority Act and conveyed to the Applicant by way of two letters both dated the 17 March 2025 bearing reference GRA/LSMS/01/25 and GRA/FOB011/02/25 respectively, according to which Respondent allegedly concluded that the license of the Applicant to conduct fixed odds betting on local races and football matches through remote communication (SMS) could not be amended to extend the scope of its activities and the letters of the Respondent dated 06 April 2020, 07 July 2020, 31 July 2020 and 08 January 2024 approving Applicant's said requests for the said extension, are allegedly null and void to the extent that the Respondent had no power to broaden the scope of Applicant activities beyond the scope of its license, and
- (ii) directing the Applicant to refrain from conducting any activity relating to the conduct of fixed odds betting on horse races and football matches taking place outside Mauritius through remote communication,

in order to have the said decisions quashed reviewed, amended, reversed, set aside or otherwise dealt with according to what may appear to the Court to be lawful in the circumstances and this for the reasons set out above.

B. For an Order of *certiorari* calling upon Respondent to bring up all its records relating to its decision and decision making process to:-

- (i) regarding and relating to the decision of Respondent to issue two Directives both issued on 17th March 2025 under Section 100 (1) of the Gambling Regularity Authority Act and conveyed to the Applicant by way of two letters both dated the 17 March 2025 bearing reference GRA/LSMS/01/25 and GRA/FOB011/02/25 respectively, according to which Respondent allegedly concluded that the license of the Applicant

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to conduct fixed odds betting on local races and football matches through remote communication (SMS) could not be amended to extend the scope of its activities and the letters of the Respondent dated 06 April 2020, 07 July 2020, 31 July 2020 and 08 January 2024 approving Applicant's said requests for the said extension, are allegedly null and void to the extent that the Respondent had no power to broaden the scope of Applicant activities beyond the scope of its license, and

- (ii) directing the Applicant to refrain from conducting any activity relating to the conduct of fixed odds betting on horse races and football matches taking place outside Mauritius through remote communication,

in order to have the said decisions quashed reviewed, amended, reversed, set aside or otherwise dealt with according to what may appear to the Court to be lawful in the circumstances and this for the reasons set out above.

C. an Order granting the STAY of execution of the two Directives both dated on 17th March 2025 issued by the Respondent pursuant to Section 100 (1) of the Gambling Regularity Authority Act and conveyed to the Applicant by way of two letters both dated the 17th March 2025 bearing reference GRA/LSMS/01/25 and GRA/FOB011/02/25 respectively, according to which Respondent allegedly concluded that the license of the Applicant to conduct fixed odds betting on local races and football matches through remote communication (SMS) could not be allegedly amended to extend the scope of its activities and the letters of the Respondent dated 06 April 2020, 07 July 2020, 31 July 2020 and 08 January 2024 approving Applicant's requests for the said extension, are allegedly null and void to the extent that the Respondent had no power to broaden the scope of Applicant activities beyond the scope of its license and directing the Applicant to refrain from conducting any activity relating to the conduct of fixed odds betting on horse races and football matches taking place outside Mauritius through remote communication pending the determination of the present Judicial Review application.


D. For such other Order/Orders as the justice of the case may call for.




38. The Applicant prays accordingly.

Solemnly affirmed by the abovenamed deponent)
At Chambers, New Court House,)
Port-Louis, this 20th day of March 2025)

Drawn up by me


replacing S. S. MURDAY
Attorney-at-law

I, the undersigned attorney, hereby certify that this affidavit will form part of an application to be filed before the Supreme Court of Mauritius.


replacing S. S. MURDAY
Attorney for the Applicant



Before me



Mr S.C. Takoo
Chief Court Officer / Court Manager