

State Bank of Travancore

Vs

Goodland Plantations (P) Ltd.

Civil Appeal No. 2531 of 1969

(N.L. Untwalia, P.N. Shinghal, A.D. Koshal JJ)

07.11.1979

JUDGMENT

KOSHAL, J. –

1. For a proper appreciation of the dispute giving rise to this appeal by special leaves against the judgment dated January 20, 1969, of a Division Bench of the High Court of Kerala, a reference to various provisions of the Travancore Chitties Act (hereinafter called the 'Chitties Act') being Act 26 of 1120 (which year corresponds to years 1944 and 1945 of the Christian era) is necessary. Clause (2) of Section 3 of the Chitties Act defines a 'chitty' thus :

A 'chitty' means a transaction by which one or more persons hereinafter called the foreman or foremen enter into an agreement with a number of persons, that every one of the contracting parties shall subscribe a certain amount of money or quantity of grain by periodical installments for a certain definite period and that each in his turn, as determined by lot or by auction or in such other manner as may be provided for in the variola, shall be entitled to the prize amount.

"Chitty amount" is defined in clause (3) of Section 3 to mean the sum total of the contributions payable by all the subscribers for any instalment without any deduction for discount. In clause (4) the term 'discount' is stated to mean the amount of money or quantity of grain which a prize winner has, under the terms of the variola, to forgo for payment of veethapalisa, foreman's commission or other expenses. A 'foreman' as per clause (6) is the person who, under the variola, is responsible for the conduct of the chitty. 'Variola' is defined in clause (14) to be a document containing the articles of agreement between the foreman and the subscribers in relation to the chitty while, under clause (15) 'veethapalisa' is the share of a subscriber in the discount available under the variola for ratable distribution among the subscribers at each instalment of the chitty. 'Prize amount', says clause (9), means the chitty amount reduced by the discount.

2. Section 9 enumerates 13 particulars which a variola must contain and they are :

- (1) the full name and residence of every subscriber;
- (2) the number of tickets or the fraction thereof held by each subscriber;
- (3) the number of instalments and the amount payable for each ticket at every

instalment;

- (4) the date on which the chitty is to begin and the date on which it is to terminate;
- (5) the mode of ascertaining the prize winner at the successive instalments;
- (6) the amount of discount which a prize winner at any instalment has to forgo;
- (7) the mode and proportion in which the discount is distributable by way of veethapalisa, foreman's commission and other allowance, if any;
- (8) the time and place at which the chitty is to be conducted;
- (9) the instalment at which the foreman is to get the prize;
- (10) the approved banks in which chitty moneys shall be invested by the foreman under the provisions of the Act;
- (11) the consequence which a non-prized or prized subscriber, or the foreman, will be liable to in case of any violation of the variola;
- (12) the nature and particulars of the security offered by the foreman under Section 17; and
- (13) any other particulars that may from time to time be prescribed by the government.

Section 14 deals with time and place where the drawing of prizes in a chitty shall be conducted. Section 17 to 24 relate to the rights and liabilities of a foreman while the next three sections following provide for non-prized subscribers. Sections 29 to 32 embrace provisions regarding prized subscribers. Section 38, 39 and 41 relate to termination of chitties and may be reproduced here with advantage :

38. (1) When a foreman dies or becomes of unsound mind his legal representative or his guardian as the case may be, shall in the absence of any provision in the variola to the contrary, take the place of the foreman and have the right to continue the chitty or to make suitable arrangements for the further conduct of the chitty.

(2) When a foreman is adjudicated an insolvent under the law relating to insolvent debtors for the time being in force or withdraws from the chitty under Section 24 or fails to conduct the chitty at any instalment or any other date before the next succeeding instalment as may have been agreed upon by a special resolution in that behalf, any one or more of the non-prized subscribers authorized by a special resolution may, in the absence of any provision in the variolas for the future conduct of the chitty, take the place of the foreman and have the right to continue the chitty or to make suitable arrangements for the further conduct of the chitty.

39. A chitty shall be deemed to have terminated only - (1) when the period fixed in the variola or the period as altered by a subsequent special resolution for the duration of the chitty expired, or

(2) when the legal representative of a deceased foreman or the guardian of a foreman of unsound mind or the subscriber or subscribers selected therefor fail to conduct the chitty or make suitable arrangements for the further conduct of the chitty as provided for in Section 38 :

Provided however that if there are more foreman than one and one or more such foreman are living and are not disqualified to act under Section 38, the chitty shall not be deemed to have terminated under this clause if there is provision in the variola enabling the remaining foreman to conduct the chitty or if the non-prized subscribers agree by a special resolution to the conduct of the chitty by the remaining foreman or foreman.

41. Except in the case of clause (1) of Section 39, every nonprized subscriber shall, unless otherwise provided for in the variola and subject to the provisions of Section 27, be entitled to get back his contributions at the termination of the chitty without any deduction for veethapalisa, if any, received by him.

3. The facts are undisputed and may be briefly stated. The plaintiff, viz., the Goodland Plantations (P) Ltd., (hereinafter referred to as the 'Company') became a subscriber to a monthly chitty run by the Kottayam Orient Bank Limited ('the Orient Bank' for short) as foreman. The Company was to pay, like all other subscribers, a sum of Rs. 20,000 in 50 monthly instalments of Rs. 400 each. The conduct of the chitty was governed by variola Ex. P-1, apart from the various provisions of the Chitties Act. The chitty started on September 10, 1960, when the Company paid the first instalment due from it. Three other instalments were paid by the Company on October 10, 1960, November 10, 1960 and December 10, 1960 to the foreman. On the date last mentioned, an auction was held for the prize amount for which the Company was declared to be the successful bidder, it having elected to accept a sum of Rs. 11,075 in lieu of the full amount of Rs. 20,000. The prize amount was to be paid to the Company a month later, i.e., on January 10, 1961, (when the fifth instalment was to become payable) subject to the Company furnishing security for the continued performance of its part of the variola in future. However, before that stage was reached, the Central Government, on December 17, 1960, imposed a moratorium on the Orient Bank under Section 45(2) of the Banking Regulation Act, 1949, (hereinafter referred to as 'the Banking Act') with the consequence that the Orient Bank had to suspend all business activity. The moratorium was enforced originally for the period ending with March 18, 1961, which was later on extended up to June 16, 1961 (Exs. D-1, D-2 and D-4). The suspension of business resulted in the conduct of the chitty being discontinued so that under sub-section (2) of Section 39 of the Chitties Act read with Section 41 thereof as also clause (14) of the variola, the chitty stood terminated and the Orient Bank in its capacity as the foreman of the chitty incurred the obligation to pay back all the contributions made by non-prized subscribers.

4. On May 31, 1961, the Central Government sanctioned under sub-section (7) of Section 45 of the Banking Act a Scheme prepared by the Reserve Bank of India under sub-sections (4) to (6) of that section for the amalgamation of the Orient Bank with the State Bank of Travancore (hereinafter called the 'Travancore Bank'). The Scheme provided inter alia that all assets and liabilities of the Orient Bank would stand transferred to the Travancore Bank with effect from June 17, 1961. In relation to chitties the Scheme laid down :

If the transferor bank was acting immediately before the prescribed date as a foreman in respect of any kuri or chitty as defined in the Travancore Chitties Act (XXVI of 1120) of the Cochin Kuries Regulation (VII of 1107) the rights, duties and

obligations in relation to the kuri of chitty shall be regulated in accordance with the following provisions, namely,

(i) the transferee bank shall become the foreman of the kuri or chitty and shall continue to exercise all powers and to do all such acts and things as would have been exercised or done by the transferor bank, insofar as they are not inconsistent with this scheme;

(ii) the funds, if any, of the kuri or chitty lent to or deposited with the transferor bank, or otherwise due from that bank to the kuri or chitty shall be transferred to the transferee bank, and the liabilities corresponding to such funds shall also be payable by the transferee bank in accordance with the other provisions of this scheme;

(iii) if on the prescribed date the transferor bank in its capacity as the foreman of any kuri or chitty has deposited any security for the due performance of its duties and obligations in relation to the said kuri of chitty, the said security shall continue to be available for the purposes for which it was intended, but shall if and to the extent that it is subsequently released be transferred to and vest in the transferee bank provided that the said security or as the case may be, the surplus, if any, after providing for the discharge of the duties or obligations in respect of the kuri or chitty shall be valued and utilised for the purposes of this scheme.

5. Later on it was realised that the Travancore Bank would not be able to continue the chitties for which the Orient Bank had acted as foreman earlier because those chitties had terminated owing to the failure of the Orient Bank of continue to conduct them by reason of the moratorium; and in order to cross this hurdle the Central Government passed another order dated December 4, 1961, which was described as the Kottayam Orient Bank Limited (Amalgamation with the State Bank of Travancore) (Removal of Difficulties) Order, 1961. That Order (hereinafter called the 'impugned Order') was passed under sub-section (10) of Section 45 of the Banking Act and its relevant portion is extracted below :

2. Notwithstanding anything contained in the Travancore Chitties Act of the Cochin Kuries Regulation, the suspension of any kuri or chitty for the period from December 18, 1960 to December 31, 1961, or for any part of that period and any consequent prolongation of the kuri or chitty shall have effect as though the articles in the variola(s) were altered or added to for that purpose by special resolution(s) of the subscribers of the kuri of chitty and as though the relevant provisions, if any, of the Travancore Chitties Act or the Cochin Kuries Regulation were complied with, and notwithstanding anything contained in the Travancore Chitties Act of the Cochin Kuries Regulation, the failure of the foreman to conduct the kuri or chitty during the said period shall not be deemed to have terminated the kuri or chitty.

3. Notwithstanding anything contained in the variola(s) the period fixed for the duration of the kuri or chitty shall be deemed to have been extended by the period referred to in 2 above.

4. Notwithstanding anything contained in the Travancore Chitties Act or the Cochin Kuries Regulation, the State Bank shall continue the kuri or chitty as if the provisions, if any of the said Act or the said Regulation relating to continuance of the

kuri or chitty have been complied with.

5. All the words and expressions used herein but not defined shall have the meanings respectively assigned to them in the Travancore Chitties Act, or as the case may be, the Cochin Kuries Regulation.

6. By another order dated January 15, 1962, (Ex. P-4) the impugned Order was amended so that the words "March 31, 1962" were substituted for the words "December 31, 1961" occurring in paragraph 2 thereof.

7. The effect of the impugned Order as amended by order Ex. P-4 was to obliterate the termination of the chitties as resulting from the suspension thereof by reason of the moratorium during the period from December 18, 1960 to March 31, 1962, and to enable the Travancore Bank to continue those chitties as if there had been no suspension thereof at any point of time so that they could be continued as if the relevant provisions of the Chitties Act and the relevant variolas had throughout been complied with.

8. The litigation started with a suit instituted by the Company on December 6, 1961, claiming refund of the four instalments paid by it along with interest. No reference was made in the plaint to the impugned Order presumably because the Company had no knowledge of the existence thereof as it had been passed only a couple of days before the suit was filed. The claim of the Company was based on the averment that the Orient Bank had failed to conduct the chitty to which the Company had subscribed, that the chitty had come to a termination by reason of the default made by the Orient Bank, that the Orient Bank had in consequence become liable for payment back to the Company of the instalments deposited by it and that the Travancore Bank (the sole defendant) had inherited the liability of the Orient Bank.

9. The suit was resisted on the strength of the impugned Order (as amended by order Ex. P-4) but the vires of that order were challenged by the Company on whose behalf it was urged that the impugned Order did not fall within the ambit of sub-section (10) of Section 45 of the Banking Act and that in any case that sub-section itself was constitutionally invalid inasmuch as its enactment amounted to an abdication of the legislative power which, under Article 245 of the Constitution of India, vested in Parliament and in Parliament alone.

10. The suit was originally filed in the Court of the Munsif at Kottayam but was transferred by the High Court to its own file in 1963 because the constitutional validity of sub-section (10) of Section 45 of the Banking Act was questioned.

11. The suit was dismissed by Raman Nayar, J., who that the impugned Order fell squarely within the scope of sub-section (10) of Section 45 of the Banking Act, which sub-section also did not suffer, according to the learned Judge, from the infirmity of excessive delegation. Sub-section (10) states :

If any difficulty arises in giving effect to the provisions of the scheme, the Central Government may by order do anything not inconsistent with such provisions which appears to it necessary or expedient for the purpose of removing the difficulty.

Raman Nayar, J., noted that the three requirements of the sub-section were

(1) that a difficulty should arise in giving effect to the provisions of the scheme;

(2) that the order to be made must be such as appears to the Central Government to be necessary or expedient for the purpose of removing the difficulty; and

(3) that the order must not be inconsistent with any of the provisions of the scheme and found that all three of them were amply satisfied in the present case. In his view the object of the Scheme promulgated by the Central Government on May 16, 1961, under sub-section (7) of Section 35 of the Banking Act was that the Travancore Bank should take over the business of the chitties earlier run by the Orient Bank and conduct the same to a "successful conclusion". However, that object according to the learned Judge, could not be achieved as the Scheme did not provide for an obliteration of the termination of the said chitties which had already taken place under sub-section (2) of Section 38 of the Chitties Act read with sub-section (2) of Section 39 thereof and the provisions contained in the variolas. The learned Judge was clearly of the opinion therefore that a difficulty had arisen in giving effect to the provisions of the Scheme which was sought to be remedied by the impugned Order. The argument that the Scheme did not envisage the continuation of the chitties by the Travancore Bank, that all that the Scheme provided for was that the rights and obligations of the Orient Bank in relation to the chitties stood transferred to the Travancore Bank and that in consequence, the latter became liable for the return of the amounts deposited by the subscribers with the Orient Bank, was turned down by the learned Judge with the following observations :

It is no use saying that the defendant bank could have had no difficulty in accepting that the chitty had terminated and paying off the unprized subscribers. For, that would not be to work the Scheme which clearly contemplates that the defendant bank should run the chitties to a successful conclusion. The difficulty that stood in the way of this being done was certainly a difficulty in giving effect to the provisions of the Scheme.

12. For repelling the contention put forward on behalf of the Company about the constitutional invalidity of sub-section (10) of Section 45 of the Banking Act, the learned Judge relied on In re Article 143, Constitution of India (AIR 1951 SC 332 : 1951 SCR 747 : 1951 SCJ 527) and Rajnarain Singh v. Chairman, P. A. Committee (AIR 1954 SC 569 : (AIR 1954 SC 569 : (1955) 1 SCR 290 : 1954 SCJ 661).

13. Against the dismissal of its suit, the Company instituted the appeal which was accepted by the Division Bench through the judgment challenged before us. Issac, J., speaking for himself and Pillai, J., disagreed with the learned trial Judge as to the object of the Scheme of amalgamation and observed that insofar as the chitties were concerned, there was nothing in the scheme to show that such object was to run them to a successful conclusion. He was further of the opinion that there was no difficulty at all in the way of the Scheme, as originally promulgated, being given effect to. In this connection he remarked :

There is no difficulty in paying the amount. The difficulty is only for not paying it; and what was achieved by Exs. P-3 and P-4 was the creation of that difficulty. What Ex. P-3 provides is that the period during which the chitty was not conducted would be treated as a period of suspension of the chitty by a special resolution of the subscribers. The result of that provision was that the right of the plaintiff to get from the defendant the amount subscribed to the chitty was taken away and substituted with a liability to draw the prize amount on furnishing security for payment of future

instalments. This is a provision which is clearly inconsistent with the provisions of the Scheme. Exs. P-3 and P-4 are, therefore, in my view beyond the scope of the power conferred on the Central Government under sub-section (10) of Section 45 of the Banking Companies Act.

14. In regard to the question of constitutional validity of sub-section (10), however, the Division Bench concurred with the learned trial Judge and held that sub-section (10) did not suffer from excessive delegation of legislative power.

15. Allowing the appeal, the Division Bench decreed the suit with costs of the proceedings in both the courts.

16. The question of the constitutional validity of sub-section (10) of Section 45 of the Banking Act has not been raised before us and all that we have to determine therefore is whether the impugned order falls within or outside the scope of that sub-section.

17. Shri Govindan Nair, learned Counsel for the Company, has vehemently contended that one of the objects of the Scheme was to continue the chitties (which had earlier been conducted by the Orient bank but had come to a termination by reason of the moratorium) to a "successful conclusion" as held by the learned trial Judge and that the finding to the contrary recorded in the impugned judgment is erroneous; and after hearing him and learned Counsel for the Travancore Bank at length we have no hesitation in agreeing with Shri Nair's contention. It is to be noted that the provision regarding chitties appears in the latter part of paragraph 2 of the scheme, the earlier part of which may be quoted here with advantage :

(2) As from the date which the Central Government may specify for this purpose under sub-section (7) of Section 45 of the said Act (hereinafter referred to as the prescribed date) all right, powers, claims, demands, interests, authorities, privileges, benefits, assets and properties of the transferor bank, moveable and immovable, including premises subject to all incidents of tenure and to the rents and other sums of money and covenants reserved by or contained in the leases or agreements under which they are held, all office furniture, loose equipment, plant apparatus and appliances, books, papers, stock of stationery, other stocks and stores, all investment in stocks, shares and securities, all bills receivable in hand and in transit, all cash in hand and on current or deposit account (including money at call or short notice) with banks, bullion, all book debts, mortgage debts and other debts with the benefit of the securities, or any guarantee therefor, all other, if any, property right and assets of every description including all rights of action and benefit of all guarantees in connection with the business of the transferor bank shall, subject to the other provisions of this Scheme, stand transferred to, and become the properties and assets of, the transferee bank; and as from the prescribed date all the liabilities, duties and obligations of the transferor bank shall be and shall become the liabilities, duties and obligation of the transferee bank to the extent and in the manner provided hereinafter.

Without prejudice to the generality of the foregoing provisions all contracts, deeds, bonds, agreements, powers of attorney, grants of legal representation and other instruments of whatever nature subsisting or having effect immediately before the prescribed date shall be effective to the extent and in the manner hereinafter provided against or in favour of the transferee bank and may be acted upon as if instead of the transferor bank the transferee bank had been a party thereto or as if

they had been issued in favour of the transferee bank.

18. These pervasive provisions embraced within their ambit a complete transfer of all rights and liabilities, of whatever nature, of the Oriental Bank to the Travancore Bank and no special provision was therefore needed to be included in the Scheme in regard to chitties if they were not to be continued to a "successful conclusion". As it is, the portion of paragraph 2 extracted by us earlier did provide for chitties on a special footing which could not have been the case if the right and liabilities of the Orient Bank in regard to chitties were sought to be transferred to the Travancore Bank on the basis of the termination of the chitties which had already become operative because of the moratorium and as a consequence of suspension of the chitty business by the Orient Bank. Nor was it necessary to provide in clause (1) occurring in paragraph 2 of the Scheme that "the transferee bank shall become the foreman ... and shall continue to exercise all powers and to do all such acts and things as would have been exercised or done by the transferor bank" if the chitties were to be dealt with as having come to a termination. The special provision for the chitty business in the Scheme cannot be regarded as redundant and it was obviously made with a purpose which, in the circumstances of the case, could be nothing more or less than to provide for the continuation of the chitties in supersession of their termination. No other reasonable explanation of that special provision appears to us possible. And if that be so, the entire reasoning adopted in the impugned judgment for arriving at the conclusion that the impugned order was beyond the scope of sub-section (10) of Section 45 of the Banking Act would become unacceptable; for, in that case, the difficulty which the impugned order sought to overcome would become very real so that the Central Government would be fully competent under the provisions of that sub-section to pass an order removing that difficulty and the order actually passed could not be considered to be inconsistent with the provisions of the Scheme to any extent or in any manner.

19. In the result we hold that the impugned Order did not fall outside the scope of the power conferred on the Central Government under sub-section (10) of Section 45 of the Banking Act and reverse the finding to the contrary recorded in the impugned judgment. Allowing the appeal, therefore, we set aside the impugned judgment and dismiss the suit but, in the circumstances of the case, leave the parties to bear their own costs throughout.

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