

Srinivasa Enterprises, Represented by the Managing Partner, Peddi Venkateswarlu and Others

Vs

Union of India, Represented By Ministry of Law, Justice and Company Affairs and Others

Writ Petitions Nos. 711, 138, 1152 and 1546 of 1979

(V. R. Krishna Iyer, R. S. Pathak, O Chinnappa Reddy JJ)

24.09.1980

JUDGMENT

KRISHNA IYER, J. –

1. Section 2(e) of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 (43 of 1978) (for short, the Act), defines a 'prize chit' inclusively :

2. In this Act, unless the context otherwise requires, -

(e) "prize chit" includes any transaction or arrangement by whatever name called under which a person collects whether as a promoter, foreman, agent or in any other capacity, monies in one lump sum or in instalments by way of contributions or subscriptions or by sale of units, certificates or other instruments or in any other manner or as membership fees or admission fees or service charges to or in respect of any savings, mutual benefit, thrift, or any other scheme or arrangement by whatever name called, and utilises the monies so collected or any part thereof or the income accruing from investment or other use of such monies for all or any of the following purposes, namely :-

(i) giving or awarding periodically or otherwise to a specified number of subscribers as determined by lot, draw or in any other manner, prizes or gifts in cash or in kind whether or not the recipient of the prize or gift is under a liability to make any further payment in respect of such scheme or arrangement;

(ii) refunding to the subscribers or such of them as have not won any prize or gift, the whole or part of the subscriptions, contributions or other monies collected, with or without any bonus, premium, interest or other advantage by whatever name called, on the termination of the scheme or arrangement, or on or after the expiry of the period stipulated therein,

but does not include a conventional chit;

The quintessential aspects of a prize chit are that the organizer collects moneys in lump sum or instalments, pursuant to a scheme or arrangement, and he utilises such moneys as he fancies primarily for his private appetite and for (1) awarding periodically or otherwise to a specified number of subscribers, prizes in cash or kind and (2) refunding to the subscribers the whole or part of the money collected on the termination of the scheme or otherwise. The apparent tenor may not

fully bring out the exploitative import lurking beneath the surface of the words which describe the scheme. Small sums are collected from vast numbers of persons, ordinarily of slender means, in urban and rural areas. They are reduced to believe by the blare of glittering publicity and the dangling of astronomical amounts that they stand a chance - in practice, negligible - of getting a huge fortune by making petty periodical payments. The indigent agrestics and the proletarian urbanites, pressured by dire poverty and doped by the hazy hope of a lucky draw, subscribe to the scheme although they can ill afford to spare any money. This is not promotion of thrift or wholesome small savings because the poor who pay, are bound to continue to pay for a whole period of a few years over peril of losing what has been paid and, at the end of it, the fragile prospects of their getting prizes are next to nil and even the hard earned money which they have invested hardly carries any interest. They are eligible to get back the money they have paid in dribbles, virtually without interest, the expression 'bonus' in Section 2(e) being an euphemism for a nominal sum. What is more, the repayable amount being small and the subscribers being scattered all over the country, they find it difficult even to recover the money by expensive, dilatory litigative process.

2. Since there are a large number of prize chits all over the country which have almost become a pan-Indian epidemic and since the total number of people victimised by these projects are considerable the injury to the community is substantial, so that a welfare State dedicated to the directive principles of Part IV has to awake and protect the vulnerable sector. Another weighty factor which has alerted the State into action is that the flood of funds flowing through prize chits benefit the organisers of such schemes who have no social responsibility for national productivity and in their hands is easy money with little developmental benefits or attractive returns for the poor investors.

3. The noxious net cast by the prize chit promoters was large and the State moved to stop this menace. Many a little makes a mickle, and those small sums collected from a substantial number of subscribers accumulated into huge resources which otherwise would ordinarily have been available for national development. The grim picture of the luckless many who were losing their money, appetized by gambling prospects, and the sterilization of people's resources which were siphoned off by private adventurists through prize chits to the detriment of national development ignited the impugned legislation.

4. Such is the case of the State as justification for enacting what is contended for as unconstitutional for three reasons which we will presently examine.

5. The Union of India has furnished socio-economic data to help the court appreciate how expert opinion had been collected before launching on the prohibitory legislation. A study group headed by Dr. J. S. Raj made a report to the Central Government wherein pointed reference was made to prize chits and allied schemes. The report devoted a whole chapter to prize chits, savings schemes, and others of their ilk and exposed the modus operandi of such schemes and their anti-social impact upon the community and recommended to the State to intervene and interdict. We may quote briefly to bring home tersely the trauma inflicted by lucky draw schemes on the host of luckless illiterates succumbing (perhaps astrologically) to the prize mania : (Report of the Study Group on Non-Banking Companies, Reserve Bank of India, Bombay, 1975, pp. 80-81)

..... It was observed that several companies conducting prize chits, benefits or savings schemes or lucky draws claimed themselves to be either mutual benefit financial companies (by enrolling subscribers as 'associate' members under the directions as

they stood prior to January 1, 1973) or as chit fund companies and thus contended that the subscriptions collected to by them were not 'deposits' as defined in the directions and hence not subject to any ceiling restrictions .....

#### Modus Operandi of Prize Chits/Benefit or Savings Schemes or Lucky Draws

6.3 Companies conducting the above types of schemes are comparatively of a recent origin and of late, there has been a mushroom growth of such companies which are doing brisk business in several part of the country, especially in big cities like Ahmedabad, Bangalore, Bombay, Calcutta and Delhi. They have also established branches in various States. These companies float schemes for collecting money from the public and the modus operandi of such schemes as described below :

The company acts as the foreman or promoter and collects subscriptions in one lump sum or by monthly instalments spread over a specified period from the subscribers to the schemes. Periodically, the numbers allotted to members holding the tickets or units are put to a draw and the member holding the lucky ticket gets the prize either in cash or in the form of an article of utility, such as a motor car, scooter etc. Once a person gets the prize, he is very often not required to pay further instalments and his name is deleted from further draws. The schemes usually provide for the return of subscriptions paid by the members with or without an additional sum by way of bonus or premium at the end of the stipulated period in case they do not get any prize. The principal items of income of these companies are interest earned on loans given to the subscribers against the security of the subscriptions paid or on an unsecured basis as also loans to other parties, service charges and membership fees collected from the subscribers at the times of admission to the membership of the schemes. The major heads of expenditure are prizes given in accordance with the rules and regulations of the schemes, advertisements and publicity expenses and remuneration and other perquisites to the directors.

6. The financial fall outs of these schemes were also examined by the Study Group to demonstrate how the promoter-companies were gargantuan and were swallowing up huge surpluses from the public who lost interest on their subscription, and, sometimes, even the principal amounts paid : (Ibid., p. 82)

..... Even if the company offers some amount by way of bonus or premium to the subscribers at the time of refund of their subscriptions and allowing for reasonable expenditure on publicity, commission to agents, etc., a sizeable balance will still be left with the company. This is exclusive of the amounts which the company might be collecting by way of membership fees and service charges from the subscribers and also of the amounts which it might be appropriating in respect of the subscription on forfeited tickets on which there will be no future liability for refund to the members at the end of the scheme. It will thus be obvious from the foregoing that such schemes confer monetary benefit only on a few members and on the promoter companies.

7. There is reference in the Study Group report to other studies conducted by the Reserve Bank which also demonstrated the many sinister effects upon the community on account of proliferous prize chits/benefit schemes : (Ibid., pp. 82-83, 84-85)

- (a) The companies had advanced sizeable amounts to the directors or their relatives or firms in which they were interested as partners, directors or as commission agent and there were practically no repayments of the loans;
- (b) the books of account had not been maintained satisfactorily;
- (c) close relatives of the directors had been employed in the companies as members of the staff or as agents on high salaries;
- (d) in one case, it was observed that a scheme announced by a company in which collections had been made was withdrawn subsequently without notice to the subscribers and no refunds of the subscriptions already received had been made to the subscribers. Prize moneys had not been paid to all the subscribers who had won the prizes; and
- (e) subscriptions were shown to have been refunded in the books of account of a company but doubts have been expressed by the inspecting officer about the genuineness of the payments in view of certain attendant circumstances. There have also been allegations that some companies had resorted to certain malpractices in drawing the names of prize winners.

... in the absence of any authorities judicial pronouncement on the subject, we are not sure whether the activities of companies conducting prize chits, etc., are clearly prohibited by the existing legislations.

6.10 It was been reported that the resources of prize chits are used for wasteful spending and hoarding commodities and that these schemes "enable certain persons to convert tax-evaded income into accounted money. The persons concerned pay a premium to the promoters in return for the facility". It has also been stated that "there are a number of agents who go about contacting persons who are likely to face the problem of saving their income from the tax authorities. The prize chit passbooks issued to them under different names become their passports for travelling from black money territory to the white money area - the easiest and surest way of using ill-gotten wealth. Besides, by their misleading names and companies the prize chit companies divert private savings into their personal drains, thus disrupting the national economy.

6.11 From the foregoing discussion, it would be obvious that prize chits or benefit schemes benefit primarily the promoters and do not serve any social purpose. On the contrary, they are prejudicial to the public interest and also adversely affect the efficacy of fiscal and monetary policy. There has also been a public clamour for banning of such schemes; this stems largely from the malpractices indulged in by the promoters and also the possible exploitation of such schemes by unscrupulous elements to their own advantage. We are, therefore, of the view that the conduct of prize chits or benefit schemes by whatever name called should be totally banned in the larger interests of the public and that suitable legislative measures should be taken for the purpose if the provisions of the existing enactments are considered inadequate. Companies conducting prize chits, benefit schemes, etc., may be allowed a period of three years which may be extended by one more year to wind up their

business in respect of such schemes and/or switch over to any other type of business permissible under the law.

8. The learned Solicitor-General drew our attention to cases where the notorious abuses by prize chit promoters had attracted judicial notice. In particular, he cited a decision of the Gujarat High Court in *Navjivan Trading Financing Pvt. Ltd.* ((1978) 48 Com Cas 402, 412) Thakkar, J. while dealing with the social anguish at the exploitative spectacle, said : ((1978) 48 Com Cas 402, 412)

The facts speak for themselves so eloquently that no further discussion is called for and it is unnecessary to demonstrate any further that the company is in such a precarious condition and the financial condition is so very ugly that there is no possibility whatsoever of the company ever being in a position to pay its debts. It is not in a position today and, even in future, it is not likely to be in a position to discharge the debt burden. In fact, the deficit will go on increasing and for aught we know, more innocent persons would be trapped meanwhile. The contributors from whom collections are made are persons with extremely limited financial means and are petty subscribers who cannot possibly afford to take recourse to legal proceedings. It would be cheaper for them to abandon their claims than to take recourse to legal proceedings and incur expenses for court fees and advocates' fees, apart from the inconvenience involved therein.

9. With special reference to malpractices of prize chits promoters the learned Judge drove home the point : (Ibid., pp. 416-417)

Where the company is not producing or manufacturing any goods and is not rendering any service useful to the society, where the whole purpose of its existence appears to be to provide the directors with an opportunity to enrich themselves at the cost of petty subscribers who in the hope of getting some prizes or rewards and better returns on their hard earned savings (sometimes they may even resort to borrowing in the hope of getting rich quickly) become contributories to various schemes floated by the company, the matter stands on a different footing. In a case like the present where the main activity of the company consists in tempting and roping in innocent persons in the scheme by publishing tantalizing advertisements, greater harm would ensue by refusing to pass an order of winding up than by passing an order of winding up. In fact, to wind up such company would be an act of social service, for, thereby, several innocent persons would be saved from being trapped by a company of this nature. Alas, as discussed earlier, the time taken in affording reasonable opportunity to the company in obedience to the principles of natural justice has been utilised by the company to collect lakhs of rupees from the innocent subscribers merely in order to enrich the directors in an unjust fashion. Under the circumstances, there is no scope for hesitation or reluctance in winding up the company which the court ordinarily feels when dealing with some manufacturing unit.

10. There is sufficient justification for undertaking legislation restricting the freedom to fleece through prize chits. Indeed, Shri Venugopal did not seriously contest this position. The thrust of his argument was that his client was a well-behaved prize chit organizer, above-board in all respect, and so, a package of proper safeguards would adequately protect the community and a total ban was recklessly excessive, unintelligently over broad and, therefore, unconstitutional.

11. Surely, Article 19(6) permits reasonable restrictions in the interest of the general public on the exercise of the right conferred by Article 19(1)(g). It is a constitution truism that restrictions, in extreme cases, may be pushed to the point of prohibition if any lesser strategy will not achieve the purpose. Fundamental rights are fundamental, and so, no ban can be glibly imposed unless effective

alternatives are unavailable. Counsel on both sides cited rulings for the two sides of the proposition but it is an act of supererogation to load judgments with profusion of precedential erudition to make out what is plain, profound.

12. The twin requirements of Article 19(6) are : (a) the reasonableness of the restriction upon the fundamental right to trade, and (b) the measure of the reasonableness being the compelling need to promote the interest of the general public. Public interest, of course, there is. But the controversy rages round the compulsive necessity to extinguish the prize chit enterprises geared to protection of public interest. We have already indicated that the Raj Report does recommend a total ban on prize chits. In matters of economics, sociology and other specialised subjects, courts should not embark upon views of half-lit infallibility and reject what economists or social scientists have, after detailed studies, commended as the correct course of but judges hesitate to 'rush in' where even specialists 'fear to tread'. If experts fall out, court, perforce, must guide itself and pronounce upon the matter from the constitutional angle, since the final verdict, where constitutional contraventions are complained of, belongs to the judicial arm. The alternative proposals to save the public from prize chit rackets attractively presented by Shri Venugopal do not impress us. In many situations, the poor and unwary have to be saved from the seducing processes resorted by unscrupulous racketeers who glamourize and prey upon the gambling instinct to get rich quick through prizes. So long as there is the resistless spell of a chance, though small, of securing a prize, though on paper, people chase the prospect by subscribing to the speculative scheme only to lose what they had. Can you save months from the fire except by putting out the fatal glow ? Once this prize fact of the chit scheme is given up, it becomes substantially a 'conventional chit' and the ban of the law ceases to operate. We are unable to persuade ourselves that the State is wrong in its assertion, based upon expert opinions that a complete ban of prize chits is an overkill or excessive blow. Therefore, we decline to strike down the legislation on the score of Article 19(1)(f) and (g) of the Constitution.

13. We may not be taken to mean that every prize chit promoter is a bloodsucker. Indeed, Shri Venugopal persuasively presented the case of his client to make us feel that responsible business was being done by the petitioner. Maybe. But when a general evil is sought to be suppressed some martyrs may have to suffer for the legislature cannot easily make meticulous exceptions and has to proceed on broad categorisations, not singular individualisations.

14. We give short shrift to the next contention based upon Article 14, Broadly presented, the argument is that conventional chits and prize chits are substantially similar and, therefore, permission to continue 'conventional chits' and prohibition of prize chits altogether may be discriminatory. We do not agree. Not only do the definitions show the differentiation between the two schemes, but the Raj Report also brings out the fact that 'conventional chits' and 'prize chits' are different categories with different financial features and 'prize chits' are different categories with different financial features and different damaging effects. We see no force in the plea of violation of Article 14.

15. Equally untenable is the contention that there is a discriminatory exemption from the operation of the prohibition in regard to those categories of prize chits which fall within Section 11. It runs thus :

11. Nothing contained in this Act shall apply to any prize chit or money circulation scheme promoted by -

(a) a State Government or any officer or authority on its behalf; or

(b) a company wholly owned by a State Government which does not carry on any business other than the conducting of a prize chit or money circulation scheme whether it is in the nature of a conventional chit or otherwise; or

(c) a banking company as defined in clause (c) of Section 5 of the Banking Regulation Act, 1949, or a banking institution notified by the Central Government under Section 51 of that Act or the State Bank of India constituted under Section 3 of the State Bank of India Act, 1955, or a subsidiary bank constituted under Section 3 of the State Bank of India (Subsidiary Banks) Act, 1959, or a corresponding new bank constituted under Section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, or a Regional Rural Bank established under Section 3 of the Regional Rural Banks Act, 1976 or a cooperative bank as defined in clause (bii) of Section 2 of the Reserve Bank of India Act, 1934; or

(d) any charitable or educational institution notified in this behalf by the State Government, in consultation with the Reserve Bank.

A bare reading of that provision makes it clear that the exempted categories do not possess the vices of private prize chits. For one thing, what are exempted are prize chits and money circulation schemes promoted by or controlled by the State Governments, the Central Government or the State Bank of India or the Reserve Bank. Even rural banks and cooperatives covered by Section 11, are subject to public control. Likewise, charitable and educational institutions are exempted only if they are notified by the State Government in consultation with the Reserve Bank. There are enough arguments to justify the different classification of these items and their exemption cannot be called in question on the ground of violation of Article 14. Reasonable classification wins absolution from the charge of discrimination if the differentia has a nexus with the statutory object.

16. The final submission of Shri Venugopal was regarding legislative competency. He urged that legislation regarding lottery falls within the State List (Entry 34, List II) and Parliament cannot enact such a law under Entry 7 of List III. Relying upon *State of Bombay v. R. M. D. Chamarbaugwala* (1957 SCR 874 : AIR 1957 SC 699) counsel contended that the present legislation was aimed at prize chits and intended to ban lotteries. Such an anti-lottery law could not be sustained under Entry 7 of the List III. We are not persuaded that in pith and substance the present legislation is one against lotteries. It deals with a special specie of contracts with sinister features, although one such feature is the award of contracts with sinister features, although one such feature is the award of prizes to subscribers. While motives cannot validate or invalidate a legislation the core of the subject-matter must govern competency. So viewed, it is easy to accept the submission of the Union of India that Parliament wanted to restrict and prohibit certain types of contracts because of the noxious element of gambling and lottery implicit therein and apt to entice the credulous and incautious. We do not think it necessary to expand on the subject and the incidental impact on lotteries does not affect the vires of the Act.

17. Judicial validation of a social legislation only keeps the path clear for enforcement. Spraying legislative socio-moral pesticides cannot serve any purpose unless the target area is relentlessly hit. We hope that this legislation enacted in response to expert recommendation and popular clamour will be implemented by dynamic State action.

18. We wish to make it clear that the possible hardship that bona fide prize chit promoters may

suffer on account of the total prohibition clamped down by this legislation can be relieved against by the Central Government acting under Section 12. The learned Solicitor-General assured the court that the Union of India would take ameliorative measure to avoid unjust hardship, especially because it had power to do so under Section 12.

19. Mr. M. M. Abdul Khader appearing in Writ Petition 1152 of 1979 argued that in his case ornaments and vessels were given as prizes and if strictly construed, his client's scheme did not fall within the scope of the Act. He wanted the court to declare so but we decline to do so, since under Article 32 this Court's function is not to give advisory opinion to petitioners but to pronounce upon transgression of fundamental rights by State action. While there is no merit in his submission of procedural unreasonableness in the provisions of the Act, it is perfectly open to the writ petitioner to urge his plea that the Act does not apply to his scheme if he were prosecuted. We leave the matter at that. Shri Parekh, as intervener, Shri Kanta Rao, appearing in Writ Petition 1546 of 1979, Shri Subba Rao pressing Writ Petition 138 of 1979 and Shri M. R. K. Pillai in W.P. 1152 of 1979 have adopted the leading arguments of Shri Venugopal which we have rejected. All of them must the same fate.

20. State lotteries escalating year after year and enticing proletarian sections of the people across the States are dubious in morality and ruinous in impact. Moreover, a detailed study may disclose the diminishing returns and increasing establishment expenses, menace to peaceful life and a traffic and dubious consequences. So much so, a second look at the propriety of these State-run schemes and reversion to the old stance of the State setting an anti-lottery example, is worthwhile from many angles.

21. For the reasons given above, we dismiss all the writ petitions, leaving the parties to bear their own costs.

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