

Commissioner and Secretary to Govt. Commercial Taxes and Religious Endowments Department

Vs

Sree Murugan Financing Corporation, Coimbatore and others

Civil Appeals Nos. 582 to 625 of 1988

(Kuldip Singh, Smt. M. S. Fathima Beevi JJ)

23.04.1992

JUDGEMENT

FATHIMA BEEVI, J.:-

1. These appeals arise out of the common judgment of the Madras High Court in a batch of writ petitions in which the respondents challenged the validity of the amendments effected to Article 1 and insertion of Article 8-A to Appendix 11 of the Tamil Nadu Chit Fund Rules, 1961 (for short 'the Rules'). The High Court in its judgment dated 20-3-1985 has struck down as invalid the impugned amendments.
2. The Tamil Nadu Chit Funds Act, 1961 (The Act) provides for the regulation of chit fund in the State of Tamil Nadu. 'Chit' is a transaction by which its foreman enters into an agreement with number of subscribers that every one of them shall subscribe certain sum by instalments for a definite period and that each subscriber in his turn as determined by lot or by auction, shall be entitled to a prize amount. The sum total of the subscription payable by all the subscribers for any instalment of a chit without any deduction for discount or otherwise is chit amount.
3. It is useful to summarise the scheme of the Act and the Rules. The Registrar of chit funds is appointed by the Government under Section 51. No person can start or conduct any chit unless he registers with the Registrar the proposed bye-laws of the chit. Section 7 provides that the Registrar, on being satisfied that the bye-laws have been registered, the chit agreement has been filed, and the security required under Section 12 has been furnished by the foreman, grants "certificate of commencement". The auction or drawing of any chit commences only on obtaining such certificate. The security furnished under Section 12 can only be released by Registrar in accordance with the prescribed procedure.
4. Under Section 16 every foreman has to prepare and file with the Registrar a duly audited balance-sheet. The defaulting nonprized subscriber is liable to be removed and the aggrieved person has a right of appeal to the Registrar whose order in the matter is final. Any substitution in place of a defaulting subscriber has to be recorded and copy filed with the Registrar. The rights of the prized or non-prized subscribers in the chit cannot be transferred or interfered with without the previous sanction in writing of the Registrar. The foreman is required to maintain all the records pertaining to a chit for a specified period. The Register is empowered under Section 37 to inspect the chit books and all records after giving due notice. If the Registrar is of the opinion that the accounts of any chit are not properly maintained and that such account should be audited, it shall be lawful for him under

Section 51(4) to have such account audited by a chit auditor. The foreman has a right of appeal against the order of the Registrar refusing to register byelaws or to grant a certificate of commencement or refuse to accept the security or refusing to release the property charged by way of security as provided under Sec. 54. Penalty for the contravention of the provisions is provided under Sec. 56.

5. The provisions of the Act impose duties on the Registrar and are intended to regulate the conduct of the business. The Registrar has to take adequate security and keep the same intact until the claims of all subscribers are satisfied and till the termination of the chit, the Registrar is required to discharge several duties.

6. Section 63 empowers the Government to make rules for carrying out all or any of the Purposes of the Act. Section 53 which provides for levy of fees reads:-

"53. (1) There shall be paid to the Registrar such fees as the Government may from time to time, prescribe for -

(a) the registration of the bye-laws of a chit under Section 3;

(b) the grant of a certificate of commencement under Section 7;

(c) filing with the Registrar of the chit agreement and copies of documents under Sections 11, 20, 21, 29 and 32;

(d) the inspection of documents under Section 52;

(e) the certificate, copy of or extract of documents under Section 52;

(f) the audit of accounts of the foreman and the issue of an audit certificate;

(g) such other matters as may appear necessary to give effect to the purposes of this Act.

(2)A table of fees payable under subsection (1) shall be published in the Fort St. George Gazette."\*

\* Now the Tamil Nadu Government Gazette.

7. The Rules have been framed under Section 63. Rule 3 states that the bye-laws shall provide for the matters specified thereunder. If the Registrar refuses to register the bye-laws of a chit, he shall record his reasons for such refusal in writing and communicate a copy of the order to the applicant. Rule 11 prescribes the particulars to be contained in the chit agreement, R. 14 prescribes the form of minutes of the proceedings and Rules 15 to 22 regulate the acceptance and release of security. In the case of cash deposited in an approved bank and transferred in favour of Registrar, intimation has to be given by the Registrar to the bank. Under Rule 22 the Registrar before releasing the security may call upon the foreman to produce register and books of accounts maintained and issue a notice to the subscribers. Registrar has to hear objections, if any, and inquire into the same and record the decision in writing. On the application of the foreman, the Registrar shall cause the balance-sheet and profit and loss account to be audited by the Chit Auditor as expeditiously as possible. Rule 42 states that the fees payable to the Registrar for the matters specified under Section 53 shall be as set

out in Appendix 11 and shall be paid in cash. Appendix 11 contains the table of fees for the registration of bye-laws of chit under subsection 3 as Article 1 and for the audit of accounts under sub-section (4) of Section 51 as Article 8.

8. The impugned amendments are to the following effect:-

#### AMENDMENT

In the said Rules, in Appendix 11, in the Table of Fees (1) for Article 1 and the entries relating thereto, the following Article and entries shall be substituted, namely:-

1. For the Registration of bye-laws of a chit under Section 3.

Rates of Fees.

a) for chits for a term of less than one year Re. 1/- Re. 1/- per subscriber or instalment whichever is higher subject to a minimum of Rs.50/-

b) for chits for a term of one year and above Rs. 2.50 Per subscriber or instalment whichever is higher subject to a minimum of Rs. 50/-.

i) chit amount of value up to Rs. 5,000/-Rs. 5/- Per subscriber or instalment whichever is higher subject to a minimum of Rs. 50/-.

ii) for chit amount of value between Rs.5,001/- and Rs.10,000/- Rs.5/- Per subscriber or instalment whichever is higher subject to a minimum of Rs. 50/-

iii) for chit amount of value between Rs. 10,001/- and Rs. 20,000/-Rs.5/- Per subscriber or instalment whichever is higher subject to a minimum of Rs. 50/-

iv) for chit amount of value between Rs. 20,001/- and Rs. 30,000 / -Rs. 10/- Per subscriber or instalment whichever is higher subject to a minimum of Rs. 50

v)for chit amount of value between Rs. 30,001/- and Rs. 40,000 / - Rs. 12/- Per subscriber or instalment whichever is higher subject to a minimum of Rs. 50/-

vi)for chit amount of value between Rs. 40,001/-and Rs. 50,000/ - Rs. 15 / - Per subscriber or instalment whichever is higher subject to a minimum of Rs. 50/-

vii)for chit amount of value exceeding Rs. 50,000 /- Rs. 20/- Per subscriber or instalment whichever is higher subject to a minimum of Rs. 50/-

2).....

3) after Article 8, as so amended, the following Article and entries shall be inserted, namely:-

"8A. For filing Balance-sheets audited and certified by Chartered Accountant.

(a)When the chit amount does not exceed Rs. 500/- Rs. 10.00/-

(b)When the chit amount exceeds Rs. 500/- for the first Rs. 500/- as under sub-clause (a) and for every Rs. 500/- or part thereof in excess of Rs. 500/- subject to the maximum of Rs. 250/-. The fee leviable under this clause shall not exceed Rs. 250/-."

9. The challenge was mainly on the ground that the rates of fees fixed in Article 1 and Article 8-A in Appendix 11 to the Rules were disproportionately high having no nexus to the nature of services rendered and intended to augment revenue and partake character of tax and as such the levy suffered from the vice of arbitrariness, hostile discrimination and unreasonable restriction on trade. The High Court came to the conclusion that the necessary element of quid pro quo was absent and as such struck-down the amendment on the said ground.

10. The High Court declared the amendment by which the registration fee was enhanced, as ultra vires, on the following reasoning (1985 (1) Mad LJ 474, Para 24):-

"When a Foreman starts a chit, under Section 3 he has to apply for registration of the bye-laws. It is only thereafter, he can approach the subscriber and get the chit agreements as prescribed under Section 5 executed and file them under Section 6. He cannot commence the business till he secures the certificate under Sec. 7 (2). Therefore when an application is made for registration of bye-laws, at that stage, Section 3(3) authorises the Registrar to find out as to whether the bye-laws are in accord with the provisions of the Act or the rules made thereunder. As to what the bye-laws should provide, Rule 3 enumerates them. An application for registration is to be in Form No. 1 accompanied by fees set out in Appendix 11. Hence, the number of the subscribers or the instalments, has no nexus with what are required to be done under Section 3(3) by the Registrar. Whether they are more or less, it was only a question of furnishing particulars and recording them and no more. If for the entire period of the chit except the registration fee no other fee is demanded and the entire services rendered is covered by this demand alone, then the correlation claimed could be available. Section 53 enables imposition of fees in respect of almost each one of the subsequent stages of the conduct of the chit whenever the authorities are to be approached or they are to exercise their powers. In the context of such provisions having been made in the Act, the registration fees claimed has to be restricted to what are required to be done under Section 3(3)."

11. The High Court held Art. 8-A to be invalid on the following reasoning [1985 (1) Mad LJ 474 at p. 489]:

"When rules themselves do not contemplate production of registers, books of accounts and other records, the claim made that pursuant to the filing of the balance-sheet, records have to be verified and that the whole matter has got to be thoroughly examined is unacceptable. In such of those matters where irregularities are noticed, the Registrar can call for all the records and scrutinise them and thereafter initiate prosecution or take such other action. Such instances would arise in both categories. Hence, when the rules themselves contemplate a different type services to be rendered when Chartered Accountant's Certificates are filed, the fee imposable under Article 8-A cannot be the same as in Article 8 which contemplates more comprehensive services to be rendered. Therefore as rightly pleaded by the petitioners, the necessary element of quid pro quo is not existing and furthermore this

is an unreasonable restriction on right of trade and the rate fixed is aimed at increasing general revenues."

12. The High Court relied upon the judgment of this Court in *Kewal Krishan Puri v. State of Punjab*, (1979) 3 SCR 1217 : (AIR 1980 SC 1008), wherein it was observed that a substantial portion of the amount collected on account of fees, must be shown with reasonable certainty as being spent for rendering services to justify the quid pro quo which is a distinguishing feature of "fee" from "tax"

13. This Court in *Sreenivasa General Traders v. State of Andhra Pradesh*, (1983) 4 SCC 353 : (AIR 1983 SC 1246) considered *Kewal Krishan Puri's* case and observed as under:-

"The decision in *Kewal Krishan Puri* case does not lay down any legal principle of general applicability. The observation made therein seeking to quantify the extent of correlation between the amount of fee collected and the cost of rendition of service, namely, "At least a good and substantial portion of the amount collected on account of fees, may be in the neighbourhood of two-thirds or three-fourths, must be shown with reasonable certainty as being spent for rendering services in the market to the payer of fee", appears to be an obiter. It was not intended to lay down a rule of universal application but it was a decision which must be confined to the special facts of that case."

14. This Court in several judgments over a period of 40 years has authoritatively crystallised the contradistinction between "tax" and "fee". The judgments of this Court in *Commr. of Hindu Religious Endowments, Madras v. Shri Lakshmindra Thirthya Swamiyar*, 1954 SCR 1005 : (AIR 1954 SC 282); *H. H. Sudhandara v. Commr. for Hindu Religious and Charitable Endowments*, (1963) Suppl 2 SCR 302: (AIR 1963 SC 966); *Hingir Rampur Coal Co. Ltd. v. State of Orissa*, (1961) 2 SCR 537: (AIR 1961 SC 459); *H. H. Swamiji v. Commr., Hindu Religious and Charitable Endowment Department*, (1980) 1 SCR 368 : (AIR 1980 SC 1); and *Southern Pharmaceuticals and Chemicals, Trichur v. State of Kerala*, (1982) 1 SCR 519 : (AIR 1981 SC 1863) were considered by this Court in *Municipal Corporation of Delhi v. Mohd. Yaseen*, (1983) 2 SCR 999 : (AIR 1983 SC 617), wherein the Court speaking through Chinnappa Reddy, J. held as under (at pp. 620-21 of AIR):

"What do we learn from these precedents? We learn that there is no generic difference between a tax and a fee, though broadly a tax is a compulsory exaction as part of a common burden, without promise of any special advantages to classes of tax-payers whereas a fee is a payment for services rendered, benefit provided or privilege conferred, compulsion is not the hall-mark of the distinction between a tax and a fee. That the money collected does not go into a separate fund but goes into the consolidated fund does not also necessarily make a levy a tax. Though a fee must have relation to the services rendered, or the advantages conferred, such relation need not be direct; a mere causal relation may be enough. Further, neither the incidence of the fee nor the service rendered need be uniform. That others besides those paying the fees are also benefited does not detract from the character of the fee. In fact the special benefit or advantage to the payers of the fees may even be secondary as compared with the primary motive of regulation in the public interest. Nor is the Court to assume the role of a cost accountant. It is neither necessary nor expedient to weigh too meticulously the cost of the services rendered etc. against the amount of

fees collected so as to evenly balance the two. A broad correlationship is all that is necessary. Quid pro quo in the strict sense is not the one and only true index of a fee; nor is it necessarily absent in a tax."

15. In Mohd. Yaseen's case (AIR 1983 SC 617), the Municipal Corporation of Delhi enhanced the slaughtering fee in respect of two categories of animals by eight fold. Some Butchers of the city questioned the revision of rates on the ground that the proposed enhanced fee was wholly disproportionate to the cost of services and supervision and was in fact not a fee, but a tax. During the pendency of the writ petitions in the High Court, by virtue of an interim arrangement, the Municipal Corporation of Delhi was permitted to collect slaughter fee at double the rates (instead of 8 times) and as a result thereof the Corporation realised a sum of Rs. 4,24,494/-. The budget of the Corporation showed a sum of Rupees 2,56,000/- as the expenditure involved in connection with the slaughter house. The High Court came to the conclusion that even if the original fee was doubled the amount realised would be more than sufficient to meet the expenditure involved and, therefore, there was no reason at all for increasing fee eight-fold and so the proposed fee was not fee but a tax for which there is no legislative mandate. This Court allowed the appeal and set aside the judgment of the High Court. This Court clarified the concept of "fee" which we have quoted above. We respectfully agree with the same.

16. The Act and the Rules provide complete mechanism for the control, supervision and regulation of the "chit fund" business in the State of Tamil Nadu. No person can start or conduct any "chit" unless he registers the proposed bye-laws in accordance with the procedure prescribed. It is common knowledge that there are large number of subscribers to the "Chitfund" business. The Act and the Rules primarily protect the subscribers and the process help the proprietors to run the "chit fund" business to their advantage. There are elaborate provisions under the Act and the Rules providing investigation into the functioning of the said business. The scheme of the Act and the Rules as detailed in the earlier part of the judgment shows that there is effective supervision and control at every stage of the functioning of the "chit fund" business. The High Court grossly erred in holding that the number of the subscribers or the instalments has no nexus with the registration fee. Every subscriber has to enter into an agreement with the Foreman who conducts the business on behalf of the proprietors. The object of the Act/ Rules obviously is to protect the interest of the subscribers. More the subscribers more burden on the authorities under the Act/ Rules and as a consequence more fee is required to meet the expenditure. It is no doubt correct that after registration of byelaws fees are payable under Section 53 of the Act for the performance of various other functions by the Registrar and his staff, but that is justified in view of the scheme of the Act. The expectation of winning a draw or a bid at the auction and becoming rich over-night lures the lower-middle class and the poor to subscribe to the chit fund.out of their savings or even by borrowing money. In such a situation apart from regulatory measures it is necessary to have strict control and supervision over the "chit fund" business. The Act and the Rules are operating with that objective. The counter-affidavit filed by the State before the High Court justified the enhancement of the registration fee inter alia on the following ,rounds 11985 (1) Mad LJ 474, Para 23]:

"..... Considering that in respect of chits of longer duration and larger number of instalments, greater amount of service had to be rendered in that, more minutes etc., were filed, it is equitable and fair to fix the fees for registration of bye-laws with regard to number of instalments or duration of chits. The fees were revised taking these facts into consideration. It has also to be verified whether the foreman has taken proper security for future payment of subscription from the prized subscriber, whether proper receipts were obtained for the payment of prize monies and on due

dates, if not whether the prize amount has been deposited in a Bank as required by the Act by verifying receipts of deposit etc. The extracts filed in respect of removal, substitution and assignment etc. have also to be verified and in respect of higher chit amounts in long term chits for longer duration these transactions will be more and they impose greater responsibility on the Chit Registrar. The work connected with watching the filing of various documents by the Foreman on the due dates and in proper form also takes considerable time.....

17. We are of the view that the High Court fell into error in quashing the impugned Amendments. The enhanced fee, in this case, is justified on the legal as well as the factual anvil of quid pro quo. Apart from the appointment of Registrar, its staff and various other functionaries, the scheme of the Act in its operation involves huge expenditure which is entirely met out of the Fee-Fund. The fees collected under the Act have, therefore, live nexus with the expenditure incurred for the benefit of the "chit fund" business.

18. To justify Article 8-A prescribing fee for film & balance-sheets by the Chartered Accountants it was stated as under:

"..... I submit that pursuant to the filing of the balance-sheet, records have to be verified. The balance-sheet has also got to be examined in detail to find out whether it is in conformity with the objects of the chit and also whether the figures tally with regard to the collections and payments of prize amounts and whether the prize amount also correctly reflects the scope of each chit and whether the commission of the Foreman has been correctly worked out. In short, the whole matter has got to be thoroughly examined to see whether that particular years' transactions fully reflect the scope of each chit and whether the collections and disbursements including the commission retained by the foreman have all been done in conformity with the Act and the Rules, since it is the subscriber's interest which is paramount. I submit that all these involve the services of the staff of the office of the Registrar."

19. The High Court was wholly unjustified in rejecting the above quoted reasoning for levying fee under Article 8-A. The High Court reached the conclusion that it was not required under the Rules to scrutinise and investigate the contents of the balance-sheets submitted through the Chartered Accountants and as such it was not necessary to do so. The High Court further found that since no scrutiny or examination of balance-sheets was required to be done, no expenditure need be incurred and as such no fee for that purpose could be levied. We do not agree with the High Court reasoning. The Registrar is justified rather duty-bound to act in furtherance of the objects of the Act and the Rules. Even otherwise when the Rules provide for filing of the balance-sheets by the Chartered Accountants, it is necessary in the context of the Rules and the Act to provide machinery to examine and verify the contents of the balance-sheets. No fault can be found with the reasons given by the State for bringing in Article 8-A in Appendix 11 to the Rules.

20. We, therefore, allow the civil appeals and set aside the judgment of the Madras High Court dated March 20, 1985. The writ petitions filed by the respondents-petitioners are dismissed with costs. We quantify the costs as Rs. 20,000/- to be paid jointly by all the respondents-petitioners in these cases. Order accordingly.

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