

(2005) 05 KL CK 0010

In the High Court Of Kerala

Case No : W.A. No's. 500 and 501 etc. of 2004

Dharmodayam Company

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 31-05-2005

Acts Referred:

Chit Funds Act, 1982 — Section 1(3), 2, 20, 4(1), 7(3)
Constitution of India, 1950 — Article 14, 19(1), 226, 245, 246
Finance Act, 2002 — Section 3(5), 4
Kerala Chitties Act, 1975 — Section 11, 12, 13, 14, 15

Citation : AIR 2005 Ker 253 : (2005) 126 CompCas 586 : (2005) 3 ILR (Ker) 219 : (2005) 3 KLT 332

Hon'ble Judges : M.N. Krishnan, J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : S. Venkitasubramonia Iyer, K. Ramakumar, V. Giri, S.V. Balakrishna Iyer, Abraham Vakkanal, K. Jayakumar, P.B. Krishnan, Jijo Paul, K.S. Bharathan, V. Rajesh, Manuraj K.J., L. Rajesh Narayan, Saji Kuriachan, Babu S. Nair, M.R. Nandakumar, Paul Abraham Vakkanal, V.R. Kesava Kaimal, N.M. Madhu, C.K. Sreejith, T.S. Arunkumar, K.N. Vinodkumar and Sathish Ninan, for the Appellant; M.K. Sucheendran, A.C.G.S.C., Raju Joseph, Spl.Government Pleader for Taxes, P. Jacob Varghese and C. Muralikrishnan, for the Respondent

Final Decision : Allowed

Judgement

K.S. Radhakrishnan, J.—Writ Petitioners challenge the constitutional validity of Sub-section 1(a) to Section 4 of the Kerala Chitties Act, 1975 introduced by the Kerala Finance Act, 2002 (Act 7 of 2002) with effect from 1.4.2002 as beyond the legislative competence of the State Legislature and also prayed for a declaration that the same is unconstitutional, void and violative of Articles 14 and 19(1)(g) of the Constitution of India. Petitioners have also sought for a writ of mandamus directing the Union of India to exercise its powers u/s 1(3) of the Chit Funds Act, 1982 (Central Act) to notify that Act within the State of Kerala. Learned Single Judge rejected the prayers of the writ petitioners and dismissed the Writ Petitions, against which these appeals have been preferred.

2. Before examining the above mentioned prayers we may trace the history of both the legislations, Kerala Chitties Act, 1975 as well as the Chit Funds Act, 1982 and the provisions contained therein for a proper appreciation of the contention raised by the writ petitioners. Articles 245 to 255 of the Constitution of India deal with legislative powers of the Union and the States. Entries in List I of Schedule VII reserve power exclusively to Parliament to make law and List II confines solely to the State Legislature and List III concurrent list in which both Parliament as well as State Legislature have concurrent jurisdiction to make laws in the occupied field. Article 245 stipulates that subject to the provisions of the Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State. No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation. Article 246 of the Constitution states that notwithstanding anything contained in Clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule. Legislature of a State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule. Parliament has also got power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List. The entries in the three lists of the Seventh Schedule to the Constitution are legislative heads or fields of legislation. Legislatures enact law in respect of topics covered by several entries in the three lists. Contracts dealing with chitties and other related transactions fall under Entry 7, List III of the Seventh Schedule. The Apex Court in *M/s. Shriram Chits and Investment (P.) Ltd. Vs. Union of India and others*, , held that the Chit Fund Act, in pith and substance, deals with special contract and consequently falls within Entry 7, List III of the Seventh Schedule. State Legislature and the Parliament therefore could legislate on those areas which squarely fall under Entry 7, List III of the Seventh Schedule.

3. State Legislature has therefore enacted the Kerala Chitties Act, 1975 (Act 23 of 1975) which came into force on 25th August, 1975 as per the notification published in the Kerala Gazette Extra Ordinary No. 480 dt. 25th August 1975 which has received the assent of the President on 18th July, 1975. The Act was also included in the 9th Schedule of the Indian Constitution as item No. 149. Section 3 of the Kerala Chitties Act states that no chitty shall be started and conducted unless the previous sanction of the Government or such Officer as may be empowered by the Government on that behalf is obtained and unless the chitty is registered in accordance with the provisions of the Act. Certain categories are exempted from the above said requirement. As per Sub-section (2) of Section 3, certain disqualifications are made in regard to the Foreman in which case no previous sanction as contemplated in Sub-section (1) shall be given. There is further restriction as per Sub-section (5) of Section 3, which says that if the Foreman is a Banking Company as defined in the Banking Companies

Act, no such Banking Company shall be entitled to conduct at a time chitties the aggregate amount of which exceeds 60% of the net assets of the Foreman. Section 4 of the Chitties Act states that where previous sanction is required by Section 3 for starting and conducting a chitty, no person can issue or publish any invitation for subscription unless such invitation contains a statement that the previous sanction required u/s 3 has been obtained, together with the particulars of such sanction. Section 5 says that if the chitty amount is less than Rs. 100/-, the provisions of the Act will not be applicable, but a license has to be taken. Sections 6 to 11 deal with the particulars relating the Variola and filing it with the Registrar and endorsement thereof etc. Section 12 states that the drawing of the chitty should be at the time and place mentioned in the variola. Sections 13 and 14 deal with the keeping of the minutes of the proceedings of drawing of chitty and filing of the same with the Registrar. Sections 15 to 22 of the Act relate to the foreman. Sections 15 to 17 deal with the security to be given by the Foreman, his rights and duties. Section 18 and 19 deal with books to be kept by the foreman and punishment for failure to keep such books. Section 220 deals with the preparation and filing of balance sheet. Sections 21 and 22 provide for the liability of the foreman and his withdrawal from the chitty. Section 23 to 25 deal with non-prized subscribers. Sections 23 and 24 deal with the payment of subscribers by non-prized subscribers and the removal of defaulting subscribers. Section 25 prescribes the method by which the amount due to a defaulting subscriber has to be dealt with. Sections 26 to 29 deal with the signing of minutes, providing security etc. by prized subscribers. Section 30 to 33 deal with transfer of rights by Foreman etc. Section 34 deals with meetings of the general body of subscribers. Section 35 to 39 deal with termination of chitties. Section 40 to 42 deal with inspection of documents by subscribers and Registrar. Section 43 to 55 deal with winding up of chitties. Section 56 to 59 deal with registration of office and fees. Section 60 to 72 are miscellaneous provisions. Kerala Chitties Act was enacted to define, amend and consolidate the law relating to chitties in the State of Kerala.

4. Parliament has enacted the Chit Funds Act, 1982 so as to provide for the regulation of chit funds and for matters connected therewith. It extends to the whole of India except the State of Jammu and Kashmir. Act has received the assent of the President on August 19, 1982 and published in the Gazette of India, Extra Ordinary on 20th August, 1982. Section 1(3) of the Act states that it shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different States. Chapter II of the Act deals with registration of chits, commencement and conduct of chit business. Section 4(1) of the Act says that no chit shall be commenced or conducted without obtaining the previous sanction of the State Government within whose jurisdiction the chit is to be commenced or conducted or of such officer as may be empowered by that Government in that behalf, and unless the chit is registered in that State in accordance with the provisions of the Act. Chapter III deals with rights and duties of foreman.

Chapter IV deals with rights and duties of non-prized subscribers. Chapter V deals with rights and duties of prized subscribers. Chapter IV deals with restrictions on transfer of rights of Foreman etc. Chapter VII relates to meetings of general body of subscribers. Chapter VIII provides for continuation of chits in certain cases and termination of chits. Chapter IX provides for inspection of documents. Chapter X provides for winding up of chits. Chapter XI provides for appointment of officers for the purpose of discharging the duties imposed upon the Registrar under the Act and for levy of fees. Chapter XII deals with disputes and arbitration. Chapter XIII provides for miscellaneous provision namely, advisory role of Reserve Bank, appeals, powers of Registrar to give extension of time for filing documents, penalties etc. Section 89 of the Act says that the State Government may in consultation with the Reserve Bank, by notification in the Official Gazette, make rules for giving effect to the provisions of the Act. Section 90 is the repeal and saving clause which says that the Kerala Chitties Act, 1975 stands repealed but the Kerala Act shall continue to apply to chits in operation on the commencement of the Act, in the same manner as they applied to such chits before such commencement.

5. Petitioners submit that they are conducting chitties in various places outside the State of Kerala. Some of them are registered under the Chit Funds Act, 1982 since that Act has been extended to several States in India. Petitioners have got subscribers from various States including State of Kerala. Some of the petitioners have registered their chit funds under the Indian Companies Act and some of them are partnership firms and some of them are proprietary concerns and some of them are unregistered firms. Some of the petitioners have Head Office in the State of Kerala and got branches outside State of Kerala and they have started various chitties through their branches outside State of Kerala. Some of the branches who have started and conducted chitties outside State of Kerala have got subscribers from the State of Kerala. None of the petitioners have got registration under the Kerala Chitties Act in the State of Kerala. State Government, it is stated, have received several complaints from the subscribers who are residing in the State of Kerala, but have joined in chitties conducted outside State of Kerala. Due to non registration of those chitties in the State of Kerala, State has no control over them and could not safeguard the interest of subscribers who are residing in the State of Kerala. Petitioners, it is pointed out, have been kept out of the regulatory mechanism prescribed in the Kerala Chitties Act, 1975. Government therefore thought of amending the Kerala Chitties Act to bring in persons like petitioners within the regulatory mechanism of the Kerala Chitties Act, 1975. Finance Minister of Kerala in his budget speech 2002-03 has stated as follows:

"there are a large number of chitty firms in the State, the majority being in the private sector. Many of the private chitty firms try to keep out of the regulatory mechanism prescribed in the Kerala Chitty Act by registering themselves outside the State and continue to operate in Kerala. There have been many complaints that because of this, investor protection often becomes difficult. I therefore

propose to amend the Kerala Chitties Act, 1975 so as to require all operators in the field, including those registered outside the State to open branch in Kerala and operate the chitties in accordance with the provisions of the Act, in all cases where at least 20% of the subscribers are residents of Kerala. The procedure for obtaining prior sanction and audit will be simplified. The limit for the chitty amount will be removed, considering the demand for high value schemes. It is expected that these changes will enable Government to improve investor protection and to earn additional revenue of Rs. 50 lakhs by way of Stamp Duty and Registration Charges".

The Kerala Chitties Act in the wake of above budget speech was amended as per Finance Act, 2002 (Act 7 of 2002). As per Section 4 of the Finance Act, Sub-section 5 of Section 3 of the Chitties Act was amended by substituting Sub-section (b). As per the said amendment the first two provisos were deleted and the third proviso was substantially retained. The result of the amendment is that except a Banking Company and a Government company, all other Foreman shall be entitled to conduct at a time chitties the aggregate amount of which does not exceed 50% of the net assets of the Foreman. By the amendment, Section 4 of the Kerala Chitties Act was also amended. Sub-section (1)(a) was inserted to Section 4. This amendment is specifically intended to bring in chitties registered outside the State who have 20% or more of the subscribers normally residing in the State of Kerala within the ambit of the Kerala Chitties Act. Bone of contention is with regard to the applicability of Sub-section (1)(a) to Section 4 to the chitties registered outside the State of Kerala. The said sub-section which is extracted below for easy reference:

"Where a chitty is registered outside the State and twenty percent or more of the subscribers are persons normally residing in the State, the Foreman of the chitty shall open a branch in the State and obtain sanction and registration under the provisions of this Act".

Petitioners are mainly aggrieved by the above mentioned amendment and sought for a declaration that the above amendment is unconstitutional and void as being beyond the legislative competence of the State Legislature and also violative of Articles 14 and 19(1)(g) of the Constitution of India.

6. We heard senior counsel Sri. S.V.S. Iyer and Sri. S.V. Balakrishna Iyer, Sri. P.B. Krishnan, Sri Jijo Paul, Sri. N.M. Madhu and Sri Abraham Vakkanaal. We also heard the Special Government Pleader (Taxes) Sri. Raju Joseph. Counsel appearing for some of the writ petitioners Sri. S.V.S. Iyer submitted that the provisions of the Kerala Chitties Act, 1975 including the newly introduced Sub-section (1)(a) to Section 4 is void under Article 254 as being repugnant to the provisions of Chit Funds Act, 1982, Central Act. Placing reliance on the decisions of the Apex Court in *Pt. Rishikesh and Another Vs. Salma Begum (Smt)*, *Engineering Kamgar Union Vs. Electro Steels Castings Ltd. and Another*, *M/s. Shriram Chits and Investment (P.) Ltd. Vs. Union of India and others*, *Godawat Pan Masala Products I.P. Ltd. and Another Vs. Union of India (UOI) and Others*, ,

counsel contended that if any provision of law made by the Legislature of the State is repugnant to any provision of law made by the Parliament which Parliament is competent to enact or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to provisions of Clause (2), the law made by the Parliament whether passed before or after the law made by the Legislature of such State or as the case may be, the existing law shall prevail and the law made by the Legislature of the State shall to the extent of the repugnancy, be void. Counsel also made a comparison of the provisions of the Kerala Chitties Act, 1975 as well as Chit Funds Act, 1982 and pointed out the inconsistency between the provisions of those two legislations. Counsel also submitted that the amendment brought about by the Finance Act, 2002 is violative of the principles of territorial nexus. Counsel submitted Section 4(1)(a) seeks to rope in those transactions or those form of contracts described as chitties which are entered into between parties outside the State of Kerala only on the ground that 20% or more of the subscribers are ordinarily residents of the State of Kerala. Counsel submitted the legislative compulsion to require the Foreman to open a branch in the State of Kerala and also to obtain sanction and registration under the Kerala Chitties Act due to the mere fact that some of the subscribers are residing in the State of Kerala is illegal and beyond the State legislative competence.

7. Counsel appearing for some of the writ petitioners Sri. S.V. Balakrishna Iyer as well as P.B. Krishnan submitted by virtue of Section 90 of the Chit Funds Act, 1982 the Kerala Chitties Act, 1975 stands repealed. Counsel submitted the non-issuance of a notification u/s 1(3) does not mean that the Central Act is not in force. Counsel submitted a repeal of a named State enactment by Parliament does not depend on whether the Central Act is notified in the concerned State. Counsel submitted the parliamentary power to enact a law for the entire country requires the repeal of the State enactment so that the field is not longer occupied by the State law and Section 90 achieves that objective and makes available the field of special contracts for legislation by Parliament. In order to bring home this point counsel referred to several decisions. Reference was made to the decisions of the Apex Court in AIR 1951 SC 332, Rajnarain Singh Vs. The Chairman, Patna Administration Committee, Patna and Another, 569, Harishankar Bagla and Another Vs. The State of Madhya Pradesh, , Ramesh Birdi v. Union of India, AIR 1990 SC 560, Zaverbhai Amaldas Vs. The State of Bombay, , etc. Counsel also submitted that the Kerala Chitties Act is void by operation of Article 254 of the Constitution of India and contended that operation of Article 254 of the Constitution does not depend on the commencement of the enactment or on the issuance of a notification u/s 1(3) of the Central Act. Reference was made to the decision of the Apex Court in Pt. Rishikesh and Another Vs. Salma Begum (Smt), . Referring to Article 254(2) counsel submitted the power of Parliament to repeal or override a State enactment in a matter coming under the Concurrent List is inherent. Reference was made to the decision of the Apex Court in A. Thangal Kunju Musaliar Vs. M. Venkitachalam Potti and Another, . Counsel also

submitted Kerala Legislature is incompetent to enact Section 4(1)(a) of the Kerala Chitties Act and contended that the provision now enacted attempts to compel persons residing and doing business outside the State of Kerala to obtain registration in the State and comply with the provisions of the Kerala Chitties Act. Counsel submitted State can make law within its territorial limits and an act with extra territorial operation on persons not normally resident in the State is illegal. Counsel made reference to the decision of the Privy Council in *Macleod v. Attorney General for New South Wales* 1891 SC 455 (PC) and *The State Vs. Narayandas Mangilal Dayame*, . Reference was also made to the decision of the Apex Court in *The State of Bombay Vs. R.M.D. Chamarbaugwala*, and *Tata Iron & Steel Co. Ltd. v. State of Bihar* AIR 1958 SC 452, and to the Full Bench decision of this Court in *Oommen v. Mini Muthoot Chit Fund* 1995 (1) KLT 401. Counsel also pointed out the legislative intention is clearly to apply the State law to "Chits registered outside the State" and the law does not bring within its ambit a "unregistered chits". In other words, unregistered chits are not affected by the regulatory measures.

8. Special Government Pleader (Taxes) Sri. Raju Joseph has highlighted the object and purpose of the legislation. Counsel submitted it has become a practice of chitty companies to register chitty outside the State of Kerala in order to escape from the regulatory measures adopted by the Kerala Chitty Act, 1975. By the amendment Government restrict the Chitty Companies from conducting chitty business in Kerala. Counsel submitted Section 4(1)(a) is well within the State legislative competence and enacted to protect the interest of the common public. Counsel submitted State Government have no intention to regulate chitties conducted outside the State. Only when the chitty business is conducted within the State of Kerala, though the chitty is registered outside the State Section 4(1)(a) will come into operation. Counsel submitted the enforcement of Section 4(1)(a) will not affect the petitioners' fundamental right under Article 19(1)(g) of the Constitution and the restriction imposed is only a reasonable restriction to protect the interest of the subscribers residing in the State of Kerala. Counsel submitted there is no repugnancy between the Central Act and the State Act and the Kerala Chitties Act was enacted in 1975 and State has got the jurisdiction to enact such a legislation. The Legislature is competent to enact such legislation since the entry falls in the concurrent list. Counsel submitted unless notification is issued by Central Government u/s 1(3) of the Act and State law will hold the field and Section 90 will have no application. Referring to Section 3 of the Kerala Chitties Act, 1975 counsel submitted no chitty shall, after the commencement of the Act be started and conducted in the State of Kerala and the counsel wanted us to read the word "and" as "or". Counsel wants us to apply a purposeful interpretation of Section 3. Referring to the decision in *Grasim Industries Ltd. v. Collector of Customs, Bombay* (2002) 128 STC 349, counsel submitted no provision in the statute and no word in any section can be construed in isolation.

9. State Legislature, in our view, is fully competent to enact the Kerala Chitties

Act, 1975. Chit Funds Act deals with special contract, consequently falls within Entry 7 List III of the Third Schedule. The dominant purpose of the Kerala Chitties Act is to regulate the chit and control the activity of the Foreman and protect the interest of the subscribers. The legislation provides for a special kind of contract and thus squarely falls within Entry 7 of List III of Schedule VII. Therefore the State Legislature has got the power to enact Kerala Chitties Act, 1975. So also the Parliament has got legislative competence to deal with special contract and legislate on it since it falls under Entry 7 of List III of Third Schedule. Both the State Legislature and Parliament have got the power to legislate on various subjects which fall under Entry 7 of List III of Third Schedule.

10. We have compared the provisions of the Kerala Chitties Act as well as Central Act. Article 254(1) lays down the general rule, Clause (2) is an exception to that Article and the proviso qualifies the exception. If there is a repugnancy between the law made by the State and that made by the Parliament with respect to one of the matters enumerated in the Concurrent List, the law made by the Parliament shall prevail to the extent of the repugnancy and the law made by the State shall, to the extent of such repugnancy, be void. Under Clause (2) if the Legislature of the State makes the provisions repugnant to the provisions of law made by the Parliament, it would prevail if the legislation of the State received the assent of the President. Even in such case, Parliament may subsequently either amend or vary or repeal the law made by the Legislature of the State. Contention of the counsel for the petitioners that Kerala Chitties Act is void as being repugnant to the provisions of Central Chit Fund Act, 1982 as violative of Article 254 of the Constitution of India cannot be sustained.

11. Counsel for the petitioners further contended that Kerala Chitties Act, 1975 is no more in force in view of Section 90 of the Chit Funds Act, 1982 by the Kerala Chitties Act, 1975 has been repealed and what has been saved is not the Act, but the transactions entered into between the parties prior to the coming into force of the Central Act. Section 90, in our view, cannot be read in isolation. The same has to be read along with Section 1(3) of the Chit Funds Act, 1982. Section 1(3) of the Act states that the Chit Funds Act, 1982 shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different States. Central Government have issued notification in respect of several States, but except State of Kerala and certain other States. Since no notification has been issued as far as State of Kerala is concerned the Kerala Chitties Act, 1975 holds the field. Legislature through statutory provision has conferred powers on the Central Government to notify different dates for the commencement of the Central Act. Legislature has made such provision since Legislature was aware that entry falls under the Concurrent List and various State Legislatures have laid down various acts applicable to respective States. Bearing in mind the fact that State Legislature also have got power under the Concurrent List, Parliament in its wisdom thought not to issue notification for the applicability of the Central Act in the States in question. Once the notification is issued by the Central Government as

authorised by the Parliament the State Act would stand repealed. So far as State of Karnataka is concerned notification has already been issued and therefore the Karnataka Chit Act is no more in operation in that State. Only when the Central Government as authorised by the Parliament issues notification the Central Act would apply in the State of Kerala. Therefore the contention of the petitioners that by virtue of Section 90 of the Chit Funds Act, 1982, the Kerala Chitties Act, 1975 has been repealed in the State of Kerala cannot be sustained. Only when the Central Government issues notification in the Official Gazette extending the Chit Funds Act, 1982 in the Kerala State, the Kerala Chitties Act, 1975 would stand repealed and the Central Act would govern the field. Petitioners' contention that by virtue of Section 90 of the Central Act, the States Act stood repealed stands rejected.

12. We may now examine whether Section 4(1)(a) would have extra territorial operation and if given effect to would conflict with the provisions of the Chit Funds Act, 1982 and other local Chit Funds Act in force in various other States. Section 4(1)(a) compels chitties registered outside the State of Kerala under the Central Act or under some other Acts, to open a branch in the State of Kerala and to obtain sanction and registration under the provisions of Kerala Chitties Act, 1975 if twenty per cent or more of the subscribers of the chitties registered outside the State of Kerala are persons normally residing in the State of Kerala. Even if chitties started and conducted outside the State of Kerala under the provisions of the Central Act or other State Act, if 20% or more of the subscribers of those chitties are normally residing in the State of Kerala then Foreman of that chitty has the obligation to open a branch in the State of Kerala and to obtain sanction and registration under the provisions of the Act. In other words, Foreman is bound by the provisions of the two legislations so far as one chitty is concerned, one by Kerala Chitties Act, 1975 and the other by the Chit Funds Act, 1982 (Central Act). If Section 4(1)(a) is given effect to, then the Foreman has to take registration under two legislations, Kerala Chitties Act as well as Chit Fund Act.

13. When we scan through the various provisions of both the legislations it is clear that there is repugnancy between some of the provisions of those legislations. The expression "discount" in Section 2(g) of the Chit Funds Act gives a different definition compared to Sub-section (4) of Section 2 of the Kerala Chitties Act, 1975. So also Section 4(1) of the Chit Funds Act deals with registration of chits, commencement and conduct of chit business. Provisions of the Kerala Chitties Act, Section 3(1) are also contextually different. Section 6(3) of the Central Act states that the amount of discount referred to in Clause (f) of Sub-section (1) shall not exceed thirty per cent of the chit amount. As per Section 7(3) of the Chit Funds Act registration of a chit shall lapse if the declaration by the Foreman under Sub-section (1) of Section 9 is not filed within three months from the date of such endorsement or within such further period or periods not exceeding three months in the aggregate as the Registrar may, on an application made to him in that behalf. Section 8 of the Chit Funds Act deals with

minimum capital requirement for the commencement etc. of a chit and creation of a reserve fund by a company and there is no corresponding provision in the Kerala Chitties Act.

14. Learned Single Judge has also found that once the requirement of furnishing security is satisfied u/s 20 of the Act, it would be arbitrary for the authorities in Kerala to insist for another security for the same chitty merely because 20% or more subscribers are residing in the State. Learned Single Judge further held that the Registrar in Kerala is absolutely free to call for details of registration and security furnished by the Foreman in any other State u/s 20 of the Central Act and after confirmation with the Registrar in that State he will record the same and shall not call for further security being furnished u/s 15 of the Kerala Act from the same Foreman for the same chitty. Learned Single Judge also found if a Foreman is registered under the Central Act in any State outside Kerala and has subscribers in Kerala, the Central Act applies to the Foreman even in regard to the business he has in Kerala, no matter the Central Act is not notified in the State and in such cases the learned Single Judge opined that the provisions of the State Act will yield to the extent the same is inconsistent with the Central Act. Learned Single Judge himself has therefore noticed inconsistencies between the various provisions of the State Act and the Central Act.

15. On a comparison of the various provisions in the Chit Funds Act and the Kerala Chitties Act we have come across several such inconsistent and hostile provisions which is repugnant to each other. Suffice to say that if Sub-section (1) (a) of Section 4 is given effect to, a Foreman who has already got the registration under the Central Act and governed by the provisions of that Act would also be subjected to various provisions of the Kerala Act which are inconsistent and repugnant to the Central Act. If Section 4(1)(e) is therefore given effect to it would have extra territorial operation.

16. Article 245 states that Parliament may make laws for the whole or any part of the territory of India. Article 245(2) stipulates that no law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation. Such law can be extended to persons, things and acts throughout all the States. State Legislature is competent to legislate only within its territory. Article 246 of the Constitution enables the State Legislature to enact a law for the whole or part of the State concerned. Article 254(1) gives overriding effect to the provisions of a law made by Parliament which the Parliament is competent to enact or to any provision of any existing law in respect of one of the matters enumerated in the List III and if a law made by the Legislature of the State is repugnant to the provisions of the law made by Parliament, the law made by the legislature of the State is to be treated as void to the extent of repugnancy. So far as State of Tamil Nadu and Karnataka are concerned the Chitties Act, 1982 (Central Act) is already in force. Section 4 of the Central Act stipulates that no chit shall be commenced or conducted without obtaining the previous sanction of the State Government. Some of the petitioners have already obtained sanction

from the State Government before commencement of conducting chitties in those States. If Section 4(1)(a) is enforced the Foreman would be governed by the Central Act in those States and also would be compelled to obtain sanction and registration under the Kerala Chitties Act, 1975 in State of Kerala.

17. State Legislature, in our view, cannot compel those registered chits under the Central Act in other States to open branch in State of Kerala to obtain sanction and registration under Kerala Chitties Act, 1975 on the mere fact that some of them may have more than 20% subscribers residing in State of Kerala. Subscribers may reside in various parts of the country for which the Foreman has no control. Factum of residence of the subscribers in the State of Kerala is not a reason to compel those registered chitties situated outside the State of Kerala to open a branch in State of Kerala and to obtain sanction and registration under the provisions of the Kerala Chitties Act, 1975. Kerala Chitties Act can operate only within the territory of State of Kerala. State cannot compel the firms which have already been registered outside State of Kerala under the Central Act or other State Act or unregistered chitties to open a branch in State of Kerala. Persons residing in the State of Kerala is free to join any chitty conducted in other States and the mere fact that 20% or more of the subscribers in State of Kerala have joined in the chitties conducted various places outside the State of Kerala would not cast any obligation on the Foreman to open a branch in the State of Kerala and to obtain registration under the provisions of the Kerala Chitties Act, 1975. Reason for introduction of such an amendment, it is stated, is due to the reason that State Government have received several complaints from subscribers of malpractice and misfeasance by the Foreman, which in our view, can be dealt with other laws of the country. State Government may be financially benefitted by opening branches in the State of Kerala by way of stamp duty as pointed out in the budget speech but that would not support a legislation. Sub-section (1)(a) of Section 4 is therefore clearly discriminatory, beyond the legislative competence of the State Legislature and violates Article 19(1)(g) of the Constitution of India.

18. Petitioners have also sought for a writ of mandamus directing first respondent to exercise powers u/s 1(3) of the Chit Funds Act, 1982 to notify the said Act within the State of Kerala. This Court in exercise of powers under Article 226 of the Constitution of India cannot issue direction to the Central Government to bring in a legislation for State of Kerala. Section 1(3) of the Act has stated that the Act shall come into force on such date as the Central Government may, by notification, in the Official Gazette, appoint, and different dates may be appointed for different States. It is a power to be exercised by the Central Government u/s 1(3). Parliament in its wisdom conferred power to Central Government taking into consideration of various aspects of the matter. Learned Central Government Standing Counsel has stated the reasons why the Central Act has not been made applicable to the State of Kerala. State Government have already framed rules u/s 89 of the Central Act and sent them for approval of the Central Government. Learned Government Pleader submitted that if the Central

Act is made applicable to the State of Kerala several branches of K.S.F.E. running outside State profitably would likely to be affected. State Government in consultation with the Reserve Bank of India of course can exempt any person or class of persons in exercise of the powers conferred u/s 67 of the Act. In our view, this Court under Article 226 of the Constitution of India cannot give any direction to the Central Government to bring in a legislation for the State of Kerala. This legal position is settled by the decision of the Apex Court in *Aeltemesh Rein, Advocate, Supreme Court of India Vs. Union of India (UOI) and Others*, wherein the Court held that it is not open to the Court to issue a mandamus to the Central Government to bring a statute or a statutory provision into force when according to the said statute the date on which it should be brought into force is left to the discretion of the Central Government.

19. The Kerala Chitties Act, 1975 has been included in the 9th Schedule as item No. 149. Article 31-B gives protection to all the statutes listed to the IX Schedule of the Constitution from any challenge on the ground of violation of any of the fundamental rights secured under Part III of the Constitution. But Section 4(1) (a) introduced by the Kerala Chitties (Amendment) Act 7 of 2002 was not included in the IX Schedule. It is trite the protection afforded by Article 31-B to the Act included in the IX Schedule would not take in the amendments effected to the Act, unless it is specifically included in the schedule. Sub-section (1)(a) of Section 4 has not been included in the 9th Schedule, hence be made subject to judicial review. If the subsequent amendments are also afforded protection it would in effect confer a power on the State Legislature to amend the Constitution which is beyond its competence. Therefore the contention that since the Act has been included in the 9th Schedule it is beyond the judicial scrutiny cannot be accepted.

20. Under the above mentioned circumstances, we are inclined to set aside the judgment of the learned Single Judge and allow all these appeals. We hold that Sub-section (1)(a) of Section 4 of the Kerala Chitties Act introduced by the Finance Act 7 of 2002 is discriminatory and violative of Article 19(1)(g) of the Constitution of India and beyond the legislative competence of the State Legislature and would not bind chitties started and conducted outside the State of Kerala and therefore declared void and unconstitutional.