(1934) 02 MAD CK 0011

In the Madras High Court

In Re: Udumalpet Nidhi, Ltd.

Date of Decision : 02-02-1934

Acts Referred:
Companies Act, 1956 — Section 15

Citation : AIR 1934 Mad 482 : (1934) ILR (Mad) 844 : 152 Ind. Cas. 440 : (1934) 40 LW 56

Hon'ble Judges : Beasley, C.J;Butler, J

Bench : Full Bench

Judgement

Beasley, C.J.—This is an appeal from an order of Stone, J., made upon a petition by the appellant-Nidhi for leave to alter Clause 3 of the

Memorandum of Association of the Nidhi. Clause 3 sets out the objects for which the Nidhi is established; and a resolution was passed approving

of the alteration of the objects of the Nidhi as set out in Schedule B, viz.:

To lend at interest moneys received from share-holders and others on the security of deposits, immovable property, goods and sureties, to receive

deposits, etc, when necessary and to pay interest and do other banking business, to conduct various kinds of trade should directors decide to

establish branches outside, to conduct various kinds of auction chits and prize chits as will be determined by the Board from time to time and to do

all acts which will be helpful to the above objects.

2. The alteration was approved by Stone, J., subject to the deletion of those parts of the clause relating to the conduct of various kinds of trade

and prize chits. With regard to the latter, which, in my opinion, was the most important alteretion proposed the conditions of the prize chit are set

out : and it is only necessary to refer to conditions Nos. 1 to 4, which are as follows:

1. All persona who have attained the age of majority whether males or females irrespective of caste can become members. 2. The prize chits

should be subscribed for 50 months continuously at the rate of Rs. 3 a month. 3. The obit amount should be paid by the 15th of every month.

Prizes will be drawn on the 19th of each month at 4 p.m. in the presence of subscribers present. 4. The subscriber that gets the prize will be paid

the prize amounts as undermentioned after getting from him a receipt for the same. Thereafter he need not pay any future subscriptions,

(a) Amount payable to the prize-drawer inclusive of subscriptions paid between

1 to 15 months Rs. 100

Do 16 to 30 months Rs. 150

Do 31 to 45 months Rs. 175

Do 40 to 50 months Rs. 200

3. It is not necessary to refer to any of the other conditions. Therefore any members of the public subject to their having attained majority, can join

the chit and, should a subscriber''s name be drawn before the termination of the chit, he gets a prize and is no longer liable to subscribe to the chit.

Thus the luckiest subscriber, suppose his name or number to be drawn in the first month''s drawing, has only subscribed Rs. 3 and nevertheless

gets a prize of Rs. 100 and deducting the Rs. 3 he has paid gets Rs. 97 as prize. On the other hand taking the period 1 to 15 months, another

subscriber''s name may be drawn in the 15th month and he also gets Rs. 100. He has paid for 15 months, at the rate of Rs. 3 a month, Rs. 45 and

gets Rs. 100 for it. Taking that Section 1 to 15 months, the subscriber whose name is drawn earlier gains a very large benefit over the other

subscribers whose names or numbers have not been drawn. As the chit progresses, the benefit to the subscriber whose name is drawn earlier

becomes further emphasized. It is contended here that this prize chit is not a lottery. If it is a lottery, obviously our learned brother was quite right in

deleting that object of the Nidhi from the proposed altered rule. In support of the appellant''s argument, we were referred to the Full Bench

decision in Narayana Aiyangar and Others Vs. K. Vellachami Ambalam and Another, . I myself was a member of that Full Bench. It is relied upon

as supporting the argument that this prize chit is not a lottery. It does not support that contention at all. The question there considered was whether the chit fund in that case amounted to a contract which was void because it was a wagering contract and not because it was a lottery. In the Pull

Bench judgment the whole discussion is whether that contract was or was not a wagering contract. That is so is clear from a Bench decision of this

Court in Universal Mutual Aid and Poor Houses Association Ltd. v. Thoppa Naidu AIR 1933 Mad. 16. In that case in the judgment it is pointed

out that what the Full Bench were considering was whether or not there was there a wagering contract and not whether the scheme was a lottery

or not. The scheme in the Universal Mutual Aid and Poor Houses Association Ltd., was a lottery; and a lottery is there defined as a distribution of

prizes by lot or chance without the use of skill and it is pointed out that a lottery is different from a wager which is a contract between two persons

that on the determination of a future uncertain event one shall win from the other and the other shall, pay or hand over to him a sum of money or

other stake. In the course of the judgment reference was made to a definition of lottery in Webster''s Dictionary, viz., a distribution of prizes by lot

or chance. Reference was also made to Sykes v. Beadon (1879) 11 Ch. D. 170, where Jessel, M.R., said at p. 190:

The holders of certificates are persons who subscribe money to be invested in funds which are to be divided amongst them by lot, and divided

unequally. That is, the persons who get the benefit of the drawings get a bond bearing interest and a bonus which gives them different advantages

from the persons whose certificates are not drawn, and it depends upon chance which gets the greater or the lesser advantage It is therefore a

subscription by a number of persons to a fund for the purpose of dividing that fund between them by chance and unequally.

4. It appears to me that the conditions laid down by Jessel, M.R., are present here. The subscribers to this chit fund are investing in a fund which is

to be divided amongst them by lot and clearly divided unequally. The conditions of the fund have only got to be examined, as they have already

been done, to make this abundantly clear. The persons who get the benefit of the drawing get a prize and the benefit which such per. sons get from

the drawings gives them different advantages from the persons whose names or numbers are not drawn and this benefit depends upon chance.

Chance decides which of the subscribers gets the greater or lesser advantage. Clearly here what is proposed is a subscription by a number of persons to a fund for the purpose of dividing that fund between them by chance and unequally. Where those conditions exist in the opinion of

Jessel, M.R., there is a lottery. I am unable to distinguish the conditions of this prize chit fund from what was stated by Jessel, M.R. In my opinion,

the proposed prize chit is clearly a lottery. That being so, it is quite obvious that the Court cannot sanction a proposal to run such a prize chit.

Under these circumstances, this appeal must be dismissed. We are asked however to extend the time for filing documents with the Registrar of

Joint Stock Companies. Ordinarily, three months are allowed u/s 15, Companies Act, for that purpose. However Sub-clause 3 of that section

gives the Court power to extend the time. Under these circumstances, as the appellants are probably out of time now in which to file the

documents we extend the time for filing documents by three months from this date.

Butler, J.

5. I agree.