
(1962) 09 MAD CK 0031

In the Madras High Court

Case No : Writ Petition No"s. 925 and 1009 of 1959

J.D. Nichani and Another

APPELLANT

Vs

State of Madras

RESPONDENT

Date of Decision : 18-09-1962

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)

Tamil Nadu Money Lenders Act, 1957 — Section 10, 14, 2, 2(6), 4

Citation : AIR 1964 Mad 30 : (1963) ILR (Mad) 532 : (1963) 76 LW 642 : (1963) 1 MLJ 202

Hon'ble Judges : s. Ramachandra Iyer, C.J;Kunhamed Kutti, J

Bench : Division Bench

Advocate : R. Gopalaswami Iyengar, W.S. Venkataramanujulu, P.V. Subramanian and K.N. Balasubramaniam, for the Appellant; A.G. for Addl. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

S. Ramachandra Iyer, C.J.—The petitioners in these two petitions are carrying on business as money-lenders in the city of Madras and

Salem respectively and they have approached this Court by means of these two petitions under Article 228 of the Constitution for the issue of a

writ of Mandamus or other appropriate writ to direct the State of Madras to forbear from enforcing the provisions of the Madras Money Lenders

Act (Madras Act XXVI of 1957) hereafter to be referred to as the Act. In the affidavits filed in support of the petitions the Constitutional validity

of the Act and in particular of Sections 2(6) to (8), 4(3), 10 and 14 of the Act have been challenged, the contention being that they contravene

either or both the fundamental rights guaranteed under Arts. 14 and 19(1)(g) of the Constitution.

2. The Act came into force on 16-10-1959 and it forms part of a series of legislative measures enacted by the State legislature to control and

regulate the profession of money lending. The preamble to the Act states:

Whereas it is expedient to make provision for the regulation and control of the business of money-lenders in the State of Madras.

While the preamble might not be useful as a guide to the construction of a statute where the terms thereof are clear, it has always been regarded as

conclusive of the reasons which motivated the Parliament or the Legislature to bring the legislation in question. It is also permissible where the

constitutional validity of an enactment is in question to understand the scope of the preamble in We light of the statement of the objects and

reasons. We shall presently refer to it. From the affidavit of the Under secretary to the Government of Madras in the Department of Industries,

Labour and Co-operation, it appears that representations had been made to the Government by individuals and associations regarding the

existence of a large number of unscrupulous money lenders in the State who were charging exorbitant rates of interest. A substantial part of such

money lenders were the Marvaries and Pathans who lent monies to the lower middle class people and lowly paid Government servants and other

wage-earners. There were also complaints from the helpless and impecunious borrowers that such money-lenders charged high rates of interest on

their borrowings, obtained from them documents for amounts much larger than what was actually lent; that no proper accounts were maintained of

the monies paid back by the borrowers and that the accounts maintained were all written up in a language which was not the regional language and

which could not easily be deciphered. There were a number of cases in Courts which related to claims of the money lenders, where the defence to

the action was that the documents executed by the debtors in favour of the lenders to evidence the loan were for twice or thrice the amount

actually lent "or borrowed.

In several of such cases such defences were upheld. There were also complaints about the unscrupulous methods adopted by those money lenders

on the pay day of their debtors. These people used to wait at the gates of Government offices or other commercial firms waiting for their debtors

to snatch away their dues from out of the pay they had received. "Many

malpractices followed by a special class of money lenders known as pawn-brokers were also brought to the notice of the Government. With a view to put an end to all such evils, the Legislature first introduced Section 51-A of the City Police Act, 1888, which authorised the Commissioner of Police to direct the removal of a person from the city limits when he was satisfied that the movements or acts of the person were causing alarm, danger or harm to the persons or property. But this statutory provision did not achieve its object or improve matters. The Legislature then enacted the Madras Pawn Brokers Act (Madras Act XXIII of 1943) to control and regulate the business of pawn brokers who did money lending. That enactment was found insufficient to remedy the mischief existing in other types of money lending. It was in this context of events that the Money Lenders Act of 1957 came to be enacted. The statement of objects and reasons to the Bill after making reference to the Legislative provisions referred to just now reads:

As it has been found by experience that the action taken u/s 51-A of the City Police Act did not produce satisfactory results, the Government consider that legislation should be undertaken to regulate and control the business of money lenders in this State.

For this purpose a self-contained and comprehensive measure replacing the Madras Pawn Brokers Act, 1943, and embodying in it other necessary provisions to control the activities and conduct of a class of money lenders, for example the pathans who seek to threaten and molest their borrowers sometimes with sticks in their hands was thought necessary. The Bill seeks to give effect to this object.

Consistent with the objects set out above in the light of the experience gained by the earlier statutory provisions in the allied field, the Act provided for the regulation of the business of money lending by introducing a system of licensing and making provision for the maximum rate of interest payable by the borrower and prescribing conditions subject to which alone the business of money lending could be carried on. The Act is to apply to the entire State of Madras. A money lender has been defined as a person whose main or subsidiary occupation is the business of advancing and realising loans. It is obvious from the definition of the term that it will apply to a person engaged solely or partly in money lending as a business.

Every money lender is required to obtain a licence in respect of each one of his shops if he has more than one shop or place of business (Section

3). There is an obligation on the part of the money lender to inform the licencing authority whenever he changes his place of business and moves to

a new place. Further, he is required to keep exhibited over his shop or place of business his name with the word money-lender (Ss. 5 and 6).

Section 4 of the Act provides for the grant and refusal of licence. There is no restriction in regard to the persons who could apply for the issue of

licence except in the case of the minors, Who could obtain it only through their guardian. If the licensing authority refuses to grant licence which it

can do only under certain conditions, its order which should be in writing will be subject to an appeal to the prescribed authority. The licence

granted would ensure for a period of one year after which it will be open to the money lender to have the same renewed every year. (Section 4).

There is also a provision for the cancellation of the licence once granted, conditions therefore being specified in sub-clauses (a) to (d) of Section 14

(1) of the Act. The Act also provides for a ceiling in regard to the rate of interest to be charged on tile loan (Section /). Section 8 enables a

borrower to deposit the money in Court in satisfaction of the debt in case a money lender refuses to accept the same, on such deposit being made,

the Court is enabled to enquire info the matter after giving notice to the lender as to whether there has been a partial or full satisfaction of the debt

and to pass an order in accordance with its finding.

Section 9 obliges the money lender to maintain proper books of account and on requisition by the debtor in writing to furnish a statement of the

account with reference to the amounts due from the debtor; but no such statement shall be required to be furnished to the debtor if he is supplied

by the money lender with a pass book in the prescribed form containing an upto date account of the money lender's transactions with the debtor.

All books of account and other records relating to the business of money lending shall be in such language as may be prescribed by rules. The Act

provides for the appointment of an Inspector who is invested with certain powers. An inspector appointed under the Act can, after obtaining a

warrant from a Presidency Magistrate in the case of the Presidency town or from a Magistrate of the First Class in the mofussal, enter the premises

of a person suspected of carrying on of business in money lending without the necessary licences or one who carries on business in contravention

of the terms and conditions of the licence issued to him. He can inspect the books of account, registers, records, and documents, etc., of the

money lender or to seize them. In case of such seizure the Inspector should return the books, records and documents to the concerned money

lender within 24 hours of the seizure or produce them before the Magistrate who issued the warrant. The Court has power to return the books of

the money lender on such terms and conditions as it may deem just and proper. Certain incidental powers are also conferred on the Inspector

(Vide Section 10). Section 13 contains provisions for taking cognizance of the offences and for punishment. It also provides for a penalty in the

case of molestation of the debtor. Section 72 confers power on the State Government to make rules to carry out the purposes of the Act.

3. Mr. R. Gopalaswami Iyengar appearing on behalf of the petitioners has contended that: the entire enactment offends the provisions of Article 14

of the Constitution as the ` lenders have been singled out for discriminatory - treatment in the matter of running their business of money lending. We

are, however, unable to accept his arguments, so broadly advanced. The subject of money-lending and money-lenders has been and is always

regarded as a special branch for legislation not merely in our country but in other countries as well. A debtor who by reason of his economic

dependence is liable to be exploited by the money-lender requires protection and the legislature has stepped in to protect and evolve a machinery

to give relief to him against any contract that he might have made with his creditor, e.g., the Usurious Loans Act empowers the Court to reopen

harsh and unconscionable transactions. The Madras Agriculturists Relief Act (Act IV of 1938) regulates the interest payable by an agriculturist

debtor. Even in England it was realised as early as the beginning of this century that the system of money lending by professional money-lenders at

high rates of interest was productive of crime, bankruptcy, unfair advantage like extortion, etc. and serious injury to the community and money

lending as a profession required regulation and control.

The Money lenders Act, 1900 (63 and 64 Vict. Ch. 51) regulating the money lenders" profession by obliging money lender to register himself and

carry on the Business in the registered name was passed. Section 6 f that Act defines money lender as including every person whose business is that of money lending. But this definition exempted the pawn-broker, a registered society or a statutory money lending corporation and a bona fide banker. Under our Constitution also ""money lending and money lenders"" is an item in the State list in the VII Schedule. It does not therefore need much argument to convince that money lenders form a distinct class for which there can be special legislation. The State Legislature has undoubted power under the Constitution to bring in and enact legislation for the regulation and control of the business of money lending. Article 14 of the Constitution, no doubt, ensures non-discrimination in the legislative and administrative spheres of Governmental activity. But that does not and has never been understood to mean that all laws should be of universal application. Legislation could be and is very often made for different classes of persons to achieve particular objects or to give effect to particular policies of the Government. It is inevitable that there should be classification in that regard, the only condition being that such classification should be bona fide and founded upon a reasonable basis having regard to the objects in view.

4. Thus the two questions to be considered are: (1) whether there is a classification and (2) whether such a classification is a reasonable one.

5. In the *The State of West Bengal Vs. Anwar Ali Sarkar*, Mahajan J. observes:

In order to appreciate this contention it is necessary to state shortly the scope of Article 14 of the Constitution. It is designed to prevent any

person or class of persons for being singled out as a special subject for discriminatory and hostile legislation. Democracy implies respect for the

elementary rights of men, however, suspect or unworthy. Equity of right is the principle of republicanism and Article 14 enunciates this equality

principle in the administration of justiceIn other words the same rule must exist for all in similar circumstances. This principle, however, does

not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position; by

the process of classification the State has the power of determining which should be regarded as a class for purposes of legislation and in relation

to a law enacted on a particular subject This power, no doubt, in some degree is

likely to produce some inequality, but if a law deals with the members of a part of well to do classes it is not open to the charge of denial of equal protection of law; on the ground that it has no application to other persons. The classification permissible, however, must be based on some real and substantial distinction bearing the just and reasonable relation to the objects sought to be attained and cannot be made arbitrarily and without any substantial basis. Classification thus means segregation in classes which have a systematic relation usually found in common properties and characteristics. It postulates a rational basis and does not mean herding together of certain persons and classes arbitrarily.

6. From what is stated above, there can be no doubt that the persons who carry on the business of money lending as a profession come under a distinct class and there is a real and substantial distinction between those persons and others, albeit such others might also lend money occasionally but not as part of their business, The object of the legislation in question is to remedy the evils which existed in the transactions entered into by the money-lenders with their borrowers. Singling out the money lenders and money lending for a special legislation having regard to the evil that was sought to be put an end to and to the object which the legislature had in view cannot at all be said to be arbitrary. It has on the other hand, a rational relationship to the objects sought to be achieved. There have been legislations in regard to money-lenders and money lending in certain other States as well, namely, West Bengal, Madhya Pradesh etc.

7. Mr. Gopalaswami Iyengar however contends that as even within the class of money lenders, the Act exempts from its operation banks and co-operative societies, it should be regarded as a discriminatory piece of legislation, there being no equality amongst the classes for which legislation is purported to be made. Learned counsel referred in this connection to Section 2(8) of the Act wherein the term "money lender" is defined as a person whose main or subsidiary occupation is the business of advancing and realising loans. This read in the light of the definition of the term loan in Section 2(6) is contended to make the legislation discriminatory amongst money lenders themselves. Section 2(6) inter alia exempts from the operation of the Act advances made by a bank or co-operative Society. A misapprehension underlies the argument. The Act applies to all money

lenders whose main or subsidiary occupation is the business of advancing and realising loans; it only exempts certain persons or authorities from the operation of the Act.

A look at exemptions would show that they are reasonable. Sub-clause (1) of Section 2 (6) deals with a deposit of money or other property in a

Government post office savings bank or in a bank as defined in the Companies Act, 1956, or with a co-operative society. Sub-clause (ii) refers to

an advance made by a bank or a co-operative society or an advance made from a provident fund to which the Provident Funds Act, 1925 applies;

sub-clauses (iii) and (iv) deal with advances made by Government or a local authority specified by the Government by notification; sub-clause (v)

refers to an advance made bona fide by any person carrying on any business not having for his primary object, the lending of money if such a loan

is given in the regular course of such business. Sub-clause (vi) relates to an advance made on the basis of a negotiable instrument as defined in the

Negotiable Instruments Act 1881 exceeding Rs. 3000. Sub-clause (vii) deals with an advance made to its members by any Nidhi or Permanent

Fund registered under any law in force in India. It is obvious that there is no need to apply the Act to transactions with or by the Government or

other authority. So far as advances made by banks are concerned, there was no need for any legislation to regulate and control such advances. A

Bank has been defined as one coming within the provisions of Section 5 of the Banking Companies Act; there exists sufficient control by the

Reserve Bank of India in the matter of advances made by such banking companies or institutions.

8. As regards co-operative societies, Madras Act VI 01 1932, provides for audit inspection etc. and there is, therefore, no necessity for bringing

in those institutions within the purview of the present legislation. In regard to Nidhis and Permanent Funds registered, there is a system of audit and

control and, therefore, the application to the present enactment to such institutions becomes unnecessary. The assumptions have therefore been

enacted with a realistic approach to the question of need for control for the various categories of creditors.

9. Section 2(6) (vi) has exempted the operation of the Act in regard to loans evidenced by Negotiable Instruments exceeding Rs. 3000 the

underlying idea being that persons who borrow such large amounts of Rs. 3000 and above on executing negotiable instruments can well take care

of themselves and that protection afforded by this Act would not be necessary as it is essentially one for the protection of the impecunious and

helpless borrowers. We are, therefore, of opinion that there is nothing in Section 2(6) of the Act to show that there has been a discrimination in the

application of the Act itself. The materials now available show that the evil of the money lenders' exploitation was with reference to lower middle

class people, particularly, the salaried servants and wage earners. The distinction made u/s 2(0) in the cases specified therein and other cases of

advances is, therefore, reasonable.

10. It was then contended that the Act has imposed a restriction on the fundamental rights of carrying on money lending business and, therefore,

ultra vires of the State Legislature. As we pointed out earlier, the Act only obliges a money lender to take out a licence. Every person who wishes

to do business as a money lender can and indeed be entitled as of right to obtain a licence and) Section 4 of the Act makes it clear that the licencing

authority can refuse licence only in the cases specified in sub clause (3) to that section. That provision states that the licencing authority may by

order in writing refuse to grant licence if such authority is satisfied - (a) that the applicant has not complied with the provisions of this Act or the

rules made thereunder in respect of an application for the grant of a licence; (b) that the applicant has made wilful default in complying with or

knowingly acted in contravention of any requirement of this Act; or (c) that the applicant has - (i) knowingly participated in or connived at any

fraud or dishonesty in the conduct of in connection with the business of money lending; or (ii) been found guilty of an offence under Ch. XVII or

Ch. XVIII of the Indian Penal Code; or (iii) been found guilty of an offence u/s 11 or Section 13 on two or more occasions; or (d) that the

applicant has had this licence cancelled within six months before the date of application.

11. Sub-clause (4) provides that any person aggrieved by an order of the licensing authority under Sub-section (3) may, within one month from the

date of communication of such order to him, appeal to the prescribed authority.

12. Reading the Act as a whole it would seem that the provision made for the

obtaining of licence is merely to regulate the business of money

lending. The mere obligation to take out a licence, though it can be said that in some sense it amounts to a restriction on the right to carry on money

lending business, cannot be regarded as. an unreasonable restriction on such a right, having regard to the evils existing in the profession of money

lending, and the need for control thereof. There can be no better way of regulating the business than by licencing the individuals who are doing that

business. The Act insures a free grant of licence to all that want to do business in money lending and there is no scope for any arbitrary refusal of

the licence. The Act itself has made provision as to the cases in which licence can be refused and the order of refusal of licence is also made

appealable to the prescribed authority. We are therefore of opinion that the statutory obligation to take out a licence viewed in the background of

the existing conditions in the business, is a reasonable one.

13. Learned counsel then challenged the validity of Section 10 of the Act, which provides for the appointment of Inspectors and the power of the

Inspectors to enter the place of money lending business to seize books of account, records etc. It was contended that this is an undue restraint on

the freedom of the money lender and on his right to carry on the business. We are, however, unable to accept the argument. u/s 10 the Inspector

cannot on his own authority make a surprise inspection of the premises of a money lender or his place of business or seize his account books etc.

Before he takes any such step, he should first be authorised by a Presidency Magistrate in the Presidency Town or a Magistrate of the first class in

the mufassal as specified in the section and it is only on the basis of the warrant issued by such a Magistrate that the Inspector can inspect the

premises and seize books etc. The Magistrate too can issue a warrant only on the basis of the report by the Inspector - a responsible officer - to

the effect that the person carrying on money lending business is so doing without a licence or does business in contravention of the provisions of the

Act or the conditions of the licence. There was a similar provision in the Madras Pawn Brokers Act, 1943. That came up for consideration in M.

Kevalchand Sowcar Vs. The State of Madras and Others, where Rajagopalan J. held that the provision in regard to inspection of the books of a

Pawn Broker by a police officer was not an unreasonable restriction on the right

of a pawn broker to carry on his business.

We are perfectly satisfied that the section referred to above is a reasonable provision inserted with a view to check the evasion of the Act and with

a view to enforcing the provisions of it. It cannot be regarded in any sense as an undue restriction on the right to carry on the business. Ingenuity of

man can always devise means of evasion; malpractices by the money lender can never be found out except by a surprise inspection of their

business. While conferring the necessary power for surprise inspection the Act affords sufficient safeguards to the money lender that he is not

unnecessarily harassed by the inspector, by interposing a magistrate who has to decide whether a warrant should be issued or not.

14. Section 13 read with Section 2 (7) then came in for considerable amount of criticism by the learned counsel for the petitioners. Section 13

provides for punishment of a person who molests or abets the molestation of a debtor. The word "molest" has been defined in Section 2(7) thus:

A person shall be deemed to "molest" another person if he (a) obstructs or uses violence to, or intimidates, such other person, or (b) persistently

follows such other person from place to place or interferes with any property owned or used by him or deprived him of, or hinders him in the use

of, any such property, or (c) loiters at or near a house or other place where such other person resides, or works, or carries on business, or

happens to be, or (d) does any act calculated to annoy or intimidate the members of the family of such other person.

It is contended that the terms of the definition of the word "molest" are so wide that even an ordinary insistent demand by a creditor of his dues

would amount to molestation of the debtor by the former and that respectable creditors who make such demands could be convicted and

punished. As we have stated earlier, there were complaints made to the Government that the money lenders were harassing their unfortunate

debtors by molesting and there was, therefore, undoubted need to protect such debtors from undue harassment. As is seen from the affidavit files

on behalf of the Government, it was a common sight to see some of the money lenders waiting at the gates of the Government Secretariat and

other public offices on the pay day to improperly compel an unwilling debtor to pay up his dues. More than this, the "Pathan money lenders" as

they are used to be called are said to have followed their debtors with whips in their hands from place to place. They were always found waiting at

the gates of the offices where their debtors were working. The situation was such that it became imperative that there should be some legislative

protection to such debtors. " Judged in the light of the above the terms of the definition of the word "molest" are not in any way excessive of the

necessities of the case. In our opinion, the provisions of Section 2(7) and 13 are reasonable restrictions on the money lender which were

necessitated by the peculiar circumstances and evils existing in society.

15. Section 14 came to them for attack as being an infringement of the provisions of Article 19 of the Constitution. Section 14 empowers the

licensing authority to cancel the licence at any time during the currency of it. But the power to cancel a licence is not arbitrary. On the terms of the

section, it is obligatory on the licensing authority to make the order in writing setting out the grounds of cancellation. Cancellation can only be made

on any one of the grounds enumerated in clauses (a) to (d) of the section. Clause (a) refers to a case where the licensee carries on business in

contravention of any of the provisions of the Act or the rules made thereunder or of the conditions of the licence. There can be no doubt that this

power is a necessary one. Clause (b) states that if any reason for which the licensing authority could have refused to grant the licence to the money

lenders under Sub-section (3) of Section 4 is brought to the notice of that authority after the grant of it the licence can be cancelled. This in essence

is a power to rectify an error and is a reasonable provision. Clause (c) covers a case where the licensee is convicted for an offence u/s 11 or

Section 13 of the Act. Clause (d) refers to a case where the licensee maintains false accounts or is found to molest or abet the molestation of any

debtor for the recovery of any debt.

There can be no two opinions that if a money lender is guilty of the offences set out above, interests of the society as a whole require that his

licence should be cancelled. The only question then is whether there is sufficient protection against improper exercise of the power. Sub-section (2)

requires the licencing authority to give notice in such cases to the licensee in writing of the grounds on which he proposes to take action requiring

the latter to show cause against it. It is a quasi-judicial power. Sub-clause (3)

makes it plain that an order cancelling the licence after enquiry is appealable to the appropriate authority. If the licensing authority or appellate authority act in excess of its jurisdiction there is always the remedy under Article 226 of the Constitution. We cannot see how the provisions contained in Section 14 of the Act are in any way unreasonable. Ordinarily a power to grant licence should also include in itself the power to cancel it under certain conditions. Section 14 empowers the licensing authority to cancel the licence only in certain defined classes of cases and having regard to the object of the enactment it cannot be said to be in any way unreasonable. We are, therefore, of opinion that neither the Act nor any of its provisions can be said to be unreasonable restrictions upon the money lender or of the business of money lending.

16. The Act is, therefore, a valid piece of legislation. The petitions fail and are dismissed. The petitioners will pay the costs of the respondents.

Advocate's fee Rs. 100 in each case.