

(1993) 09 MAD CK 0068
In the Madras High Court
Case No : Writ Petition No's. 1952/86

Madurai Ramnad Chit Funds Association	APPELLANT
Vs	
Union of India (UOI)	RESPONDENT

Date of Decision : 08-09-1993

Acts Referred:

Chit Funds Act, 1982 — Section 16, 21, 24, 6(1), 6(3)
Companies Act, 1956 — Section 210
Tamil Nadu Chit Funds Rules, 1984 — Rule 16, 28(1), 28(2), 31(1), 31(2)

Citation : (1994) 80 CompCas 686 : (1994) 1 LW 269

Hon'ble Judges : K.A. Swami, C.J.;Somasundaram, J

Bench : Division Bench

Advocate : Vtjaya Narayanan, S. Silambarasan, K. Chandramouli, K. Venkatasubramanian, P.M. Bhaskaran, S. Viswanathan, M.S. Krishnan, S. Parthasarathy, R. Desabandhu, V. Srinivasa Banu, P. Sukumar, Bhagiratha Narayanan, M. Agni, R. Sivaprakasam, R. Vijayakumar, G. Bhardwaj, D. Suresh, M. Alexander, N. Varadarajan, S. Doraisamy, P.I. Thirumogorthy, Mohanram K. Govi Ganesan, J. Ferozkhan, A. Muthukumar, K. Gopal, R. Subramanian, G. Perumal, S. Memalatha, K. Venkatasubba Reddy, N. Venkataraman, N. Vanchinathan, G. Subbiyyah, R. Parthiban, Rathna Asokan, V. Ranjeegadeesan, V. Dhanyasekar, P. Elango, D. Maiichamy, G. Latha, A. Rathakrishnan, R. Priyakumar and R. Muthuramalingam, for the Appellant; A.S. Venkataehaiamurthy, A.G.P. (Taxes), S. Sampath Kumar, Kasthurirangan and T. Srinivasamoorthi, Addl. Central Govt. Standing Counsels, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Swami, C.J.—In these writ petitions and also the writ appeals, the validity of the several provisions of the Chit Funds Act, 1982 (hereinafter referred to as the "Act") is challenged. In the meanwhile, the Supreme Court has considered the validity of the provisions contained in the very Act in *Shriram Chits and Investments (P) Ltd. v. Union of India and Ors.* reported in *Judgments Today*, 1993 (4) S.C. 399 and held that all the provisions of the Act are valid. Therefore, these writ petitions and the writ appeals are liable to be dismissed in the light of

the pronouncement made by the Supreme Court. However, an argument is advanced before us that the validity of Section 6(3) of the Act has not been specifically considered therefore, the same be considered in these cases. We may only refer to paragraphs 29 and 30 of the judgment of the Supreme Court in M/s. Shriram Chits and Investments (P) Ltd. (supra) to meet this contention. Paragraphs 29 and 30 of the judgment of the Supreme Court read as follows:

Section 6(3) of the Act reads thus: 6(3) The amount of discount referred to in Clause (f) of Sub-section (1) shall not exceed thirty per cent of the chit amount.

It was submitted that the ceiling of the discount is highly arbitrary and imposes unreasonable restriction on the business of the Petitioners. It appears to us that the ceiling of the discount is on the higher side and the subscribers, who are in need of money, per force, have to give the discount to that extent and cannot be expected to take care of their own interest when they bid at the time of chit auction. This restriction is neither arbitrary nor unreasonable.

Thus, it is clear that the Supreme Court has specifically considered the validity of Section 6(3) of the Act and held that the said provision of the Act is valid.

2. In addition to this, Learned Counsel appearing on behalf of the Petitioners/Appellants also contended that Rules 16, 28(1), 28(2), 31(1) and 31(2) of the Tamil Nadu Chit Funds Rules, 1984 (hereinafter referred to as the Rule) are ultra vires the provisions of the Act, powers of the Rule making authority and some of them are unconstitutional. No doubt, in the aforesaid judgment of the Supreme Court, the validity of these rules are not considered. Therefore, we heard both sides on the validity of the aforesaid Rules. We now proceed to consider the validity of these Rules. Rule 16 of the Rules reads thus:

16. Form of notice to Chit subscriber.-Every notice to be given by a foreman to the subscriber in a chit u/s 16 shall be in Form IX. It shall be sent to each subscriber under certificate of posting and shall also be exhibited on the Notice Board of the office of the foreman.

We have not been able to see any infirmity or invalidity in this Rule as the said Rule only prescribes the form of the notice and the mode in which the notice has to be given. Section 16 of the Act specifically provides that every draw in a chit shall be held on the date, at the time and place mentioned in the chit agreement and a notice therefor in such form and in such manner as may be prescribed shall be issued by the foreman to all the subscribers. It is pursuant to this provision, Rule 16 has been framed prescribing the Form of the notice and the mode in which the notice shall be sent. However, it is contended that the Rule in so far as it directs that the notice shall be sent under certificate of posting, is invalid inasmuch as it costs financial burden upon the foreman which he cannot meet out of the 5% commission he gets. It is necessary to ensure that notice is issued to a subscriber. Sending of notice under certificate of posting is one of the cheapest modes which the Rule provides. The fact that the foreman maintains a register for having sent the notice by itself will not be sufficient because there

will be no other records to cross-check it. If it is made compulsory to send the notice under certificate of posting, there will be a record to cross-check and ascertain as to whether the notice has indeed been sent. Therefore, we are of the view the sending of notice under certificate of posting is absolutely necessary in the light of the past experience of exploitation and foul play in the matter of conducting chit funds. In addition to this, the Supreme Court has also held that even 5% commission, provided under the Act itself is on the higher side. While considering Section 21 of the Act, it has been observed by the Supreme Court thus:

We find no reason for the Appellant Petitioners to have any objection to Clause (a) or (c) of Section 21. As regards maximum commission of 5% of the chit amount, the objection does not appear to be legitimate because any foreman is not debarred from doing any other business and he is not supposed to incur the expenditure at the cost of the subscribers and then claim higher commission. Expert Bodies have only recommended two per cent commission whereas the Act provided for 5 per cent commission. We do not find any thing unreasonable in respect of the commission.

Therefore, it is not possible to accept the contention of the Learned Counsel for the Petitioners/Appellants that the Rule in so far it provides for sending notice under certificate of posting casts additional burden and that it cannot be met out of the commission which the Foreman gets. Accordingly, it is held that Rule 16 is not ultra vires the power of the Rule making authority and it is not unreasonable. Accordingly we hold that it is valid.

3. Rule 28(1) and 28(2) of the Rules are as follows:

28. Date for submission of balance sheet: (1) The balance sheet referred to in Section 24 shall be prepared within a period of two months from the expiry of the period with reference to which it is prepared.

(2) Receipts and expenditure account and statement showing the assets and liabilities of the individual chit group shall be filed in the Form XXI with Registrar within a period of two months from the termination of the chit when the duration of the chit does not exceed one year and when the duration of chit exceeds one year on expiry of every period of twelve months and also on the termination of the chit.

From the aforesaid rules, it is clear that the same are framed pursuant to Section 24 of the Act. Sub-rule (1) Rule 28 provides that the balance sheet referred to in Section 24 shall be prepared within a period of two months from the expiry of the period with reference to which it is prepared. It is contended that u/s 210 of the Companies Act, longer time is available to a Chit Fund Company to file the balance sheet; whereas the provision contained under Rule 28(1) of the Rules read with Section 24 of the Act curtails that period. Therefore, the rule is ultra vires the provisions of the Act. In this regard, it is relevant to notice that what Sub-rule (1) of Rule 28 provides is with regard to filing of the balance sheet

referred to in Section 24 of the Act. Section 24 of the Act does not curtail the time that is provided for filing the balance sheet by the chit company as per the provisions of the Companies Act. It may be relevant to notice that Section 24 of the Act opens with the words "without prejudice to the provisions as the Companies Act, 1956". Therefore, the Chit Fund Companies are entitled to file the balance sheet availing the longer period that is available to them u/s 210 of the Companies Act. That right of the companies is not taken away in view of the fact that Section 21 of the Act provides that the provisions contained therein and without prejudice to the provisions contained in the Companies Act. Therefore, Rule 28(1) of the Rules also has to be read in the light of the provisions contained in Section 24 of the Act and also Section 210 of the Companies Act. Therefore, Rule 28(1) of the Rules specifically provides that within a period of two months from the expiry of the period with reference to which, the balance sheet is prepared. These words would show that if the balance sheet is that of Chit Fund Company, under the Companies Act, it has to be filled within a period of two months from the expiry of the period. Therefore, the period available to the Chit Fund Company under the Companies Act for filing the balance sheet is not curtailed. On the contrary, Rule 28(1) of the Rules provides that the Chit Fund Company can file it within two months from the expiry of the period relating to the filing of the balance sheet u/s 210 of the Companies Act. Thus, Sub-rule (1) of Rule 28 does not in any way take away the right in the Chit Fund Companies to file the balance sheet as per the provisions of Section 210 of the Companies Act and it does not also reduce the period available to them under the Companies Act. Hence, we see no ground to hold that Rule 28(1) of the Rules is ultra vires the provisions of the Act. Sub-rule (2) of Rule 28, no doubt it cannot be said that it is specifically framed u/s 24 of the Act. But at the same time, it cannot be said that it is extraneous to the provisions contained in the Act or more specifically the provisions contained in Section 24 and Section 89(2)(t) of the Act. Section 89(2)(t) of the Act specifically provides 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 and in particular, and without prejudice to the generality of the foregoing power, such Rules may provide for all or any of the following matters, namely (a) to (s) and (t) any other matter which is required to be or may be prescribed. The requirement of Sub-rule (2) of Rule 28 is that the firm has to file the receipts and expenditure account and statement showing the assets and liabilities of the individual chit group in Form 21 with the Registrar. If the duration of the Chit is less than a year the said receipts and expenditure account and statement have to be filed within two months from the date of expiry of the Chit and in case the duration of the chit is for a period more than twelve months, within two months on the expiry of every twelve months. Form 21 specifies several particulars to be furnished. It is relevant to notice that the balance sheet relates to the total business done by the Chit Fund Company, or an individual foremen. Whereas the receipts and expenditure account and statement showing the assets and liabilities to be filed under Sub-rule (2) of Rule 28 relates to each chit. In order

to ensure that there is no liability left under a chit and no dispute arises, such a return is necessary. Moreover, Form 21 has to be filed once in a year. Therefore, we are of the view that such a requirement cannot be held to be onerous so as to held that it amounts to an unreasonable restriction on the right of a chit company or a foreman to carry on the trade in chit fund. Any procedural requirement ensuring proper conducting of chit and ensuring smooth carrying on trade in chit fund and commission of foul play, is always desired. Therefore, we are of the view that Rule 28(2) of the Rules, cannot be held to fail outside the scope of the Act inasmuch as the scope of the Act is to provide for the regulation of the Chit funds and for matters connected therefor. Therefore, Form XXI cannot be held to be unconnected with the regulation of the Chit Funds. Hence this contention is rejected and Rule 28(2) of the rules is held valid.

4. Rule 31(1) and 31(2) of the Rules are as follows:

31. Time for filing balance sheets audited by a chit auditor or other auditors:(1) where the audit is done by the chit auditor, the foreman shall file with the Registrar a copy of the balance sheet and profit and loss account together with the audit certificate and the Auditors' report within one month from the date of receipt of the audit certificate and audit report from the chit auditor or within three months from the last day of the period covered by the balance sheet whichever is earlier.

(2) In the case of equity by an auditor qualified to act as auditor of companies under the Companies Act, 1956 (Central Act 1 of 1956), the foreman shall file with the registrar the document referred to in Sub-rule (1) within three months from the last date of the period covered by the balance sheet prepared u/s 24 and in the case of individual chit as referred to in Sub-rule (2) of Rule 28 within a period of two months.

It is not possible to appreciate so to how Rule 31(1) and (2) of the Rules can be held to be ultra virus the Rules making power. This only provides that where the audit is done by the chit auditor, the foreman shall file with the Registrar a copy of the balance sheet and profit and loss account together with the audit certificate and the Auditors's report within one month from the date of the receipt of the audit certificate and audit report from the chit auditor or within three months from the last day of the period covered by the balance sheet whichever is earlier. Thus, it gives sufficient time to the foreman to have the account audited and obtain the audit certificate and file the same. Similarly Sub-rule (2) of Rule 31 provides that in case of companies the foreman had to file with the Registrar the documents referred to in Sub-rule (1) within three months from the last date of the period covered by the balance sheet required u/s 24 and in the case of individual chit as referred to in Sub-rule (2) of Rule 28 within a period of two months. In respect of Section 24 of the Act, we have already pointed out that it is without prejudice to the provisions contained in the Companies Act. Therefore whatever right the Chit Fund Companies enjoy under the Companies Act is not taken away. The period provided under Sub-rule (2) of

Rule 31 is in addition to the period provided under the Companies Act. Therefore, we are of the view that Rule 31 also cannot be held to suffer from any infirmity nor is it possible to hold that it is beyond the power of the Rule making authority. We may also point out that these Rules are regulatory in nature. They do not in any way, take away the right of the foreman nor these rules impose any unreasonable restrictions in the matter of carrying on the trade in chit funds. Therefore, we are of the view that those Rules looked from any point of view, are reasonable and are regulatory. Hence they are held as valid. No other contention is advanced. Accordingly, following the above said decision of the Supreme Court, these writ petitions and writ appeals are dismissed. In the facts and circumstances of the case, there will be no order as to costs.