

(1963) 09 AHC CK 0023
In the Allahabad High Court
Case No : Criminal Revision No. 1631 of 1962

Mahesh Chandra Gupta and Another	Vs	APPELLANT
The State		RESPONDENT

Date of Decision : 11-09-1963

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 19(6), 245
Criminal Procedure Code, 1898 (CrPC) — Section 177, 179, 423
Evidence Act, 1872 — Section 114, 14
Prize Competitions Act, 1955 — Section 11, 14, 4, 6, 9

Citation : AIR 1964 All 572

Hon'ble Judges : D.S. Mathur, J

Bench : Single Bench

Advocate : S.N. Misra, for the Appellant; K.N. Srivastava, for the Respondent

Final Decision : Partly Allowed

Judgement

D.S. Mathur, J.—This is an application in revision by Mahesh Chandra Gupta and Umesh Chandra Gupta to challenge their conviction of an offence punishable under Sections 9 and 11(c) of the Prize Competitions Act, 1955 (to be referred hereinafter as the Act) for contravention of the provisions of Section 4 thereof. They have both been sentenced to a fine of Rs. 600/-, Rs. 500/- each u/s 9 and Rs. 100/- each u/s 11(c), in case of default, three months" Rule 1.

2. The Act was passed on October 22, 1955, but came into force on April 1, 1956. No notification pertaining to the appointment of licensing authority was published till August 25, 1956; and no general or special order as contemplated by Section 14 of the Act was passed till then. The result was that even though the Act came into force on 1-4-1956, there was till 25-8-1956 no licensing authority to whom an application for the grant of licence u/s 6 could be made, nor was there any special police officer who could act u/s 14 of the Act.

3. Prize competitions though promoted and conducted by the applicants from Bulandshahr within the State of Uttar Pradesh were meant to be availed of by

persons living outside India. When one of the winners did not receive the prize money, he made a complaint to the Government of India and the matter was in due course entrusted to a C. I. D. Inspector for inquiry. On 5-8-1950 the C. I. D. Inspector moved the competent Magistrate for the grant of permission to investigate the crime. Permission was given the same day and the Inspector forthwith searched the house of the applicants when many articles relating to prize competitions were recovered from therein.

4. Both the lower court have recorded the finding that the applicants were promoting and conducting prize competitions in which the total value of the prizes to be offered in any month exceeded one thousand rupees. They also recorded the finding that the applicants were running the prize competitions from Bulandshahr, but the entries were submitted by persons living outside India within the Commonwealth. The Magistrate convicted the applicants under Sections 9 and 11 of the Act for contravention of Section 4 thereof, and sentenced them to a fine of Rs. 1,000/- each. The conviction was maintained in appeal but the Sessions Judge reduced the fine to Rs. 500/- u/s 9 read with Section 4 of the Act and Rs. 100/- u/s 11 of the Act. In case of non-payment of fine, they were to undergo three months' Rule 1 each. The Magistrate had in case of non-payment of fine, awarded a sentence of only twenty days Rule 1 each. The sentence in default as awarded by the Sessions Judge clearly amounts to enhancement of sentence and is manifestly without jurisdiction.

5. Most of the grounds raised in the revision application pertain to the contravention of Section 5 of the Act and in view of the fact that there was contravention of Section 4 and not of Section 5, it is not necessary to make any comment on these grounds except in so far as it may be necessary for recording a finding whether the conviction is or is not proper.

6. The first point urged before me is that the provisions of the Act are unconstitutional as they infringe the provisions of Articles 14 and 19 of the Constitution of India. The provisions of the Act are said to be hit by Article 14 on account of the legislature not laying down any policy in the Act for the guidance of the licensing authority and thereby giving him unrestricted and arbitrary power either to grant or to refuse to grant a licence u/s 6 of the Act. On this point I need not express any opinion. Even if it be assumed for the sake of argument that the delegation of power to grant or refuse to grant a licence is arbitrary and unconstitutional, Section 6 and other connected provisions can be declared invalid, and as such provisions are severable, they shall not affect the validity of Section 4 and the corresponding penal clauses.

7. If Section 6 is declared invalid, it shall be open to persons to promote or conduct prize competition, without any licence, in which the total value of the prize or prizes (whether in cash or otherwise) to be offered in any month does not exceed one thousand rupees. Naturally, therefore, the whole of Sections 5, 8, 16 and 20(2)(a)(b) and (d) of the Act and those parts of Section 9 of the Act which declare contravention of Section 5 of the Act an offence, of Section 10

which permit cancellation or suspension of the licence in addition to the penalty laid down therein, and of Sections 11 and 15 which make a reference to the licence or relate to the contravention of the conditions thereof, shall also be invalid. If the invalid clauses are expunged, the remaining Act can be enforced without any difficulty. The prohibition imposed by Section 4 shall remain, and the promoters of prize competitions not covered by the prohibitory clause shall have to keep accounts and submit the same to the licensing authority as laid down in Section 7. For contravention of the valid provisions of the Act, the offenders can be punished under Sections 9 to 11 of the Act; and the order of forfeiture of newspapers and publication contemplated by Section 15 can be passed. Sections 12 to 14 and 17 to 19 and Sub-section (1) and Clauses (c) and (e) of Sub-section (2) of Section 20 shall also be enforceable. The valid parts of the Act are a complete and enforceable enactment, which can be given effect to. In other words, Section 4 and the corresponding penal and material provisions of the Act are not hit by Article 14 of the Constitution of India.

8. Article 19(1) of the Constitution of India narrates the rights which a citizen of India enjoys, one of which is that he can practice any profession, or carry on any occupation, trade or business. This right is detailed in Sub-clause (g) of Art 19(1). The right to practice any profession, or to carry on any occupation, trade or business is not an unrestricted one: under Clause (6) of the Article the State can impose, in the interest of the general public, reasonable restrictions on the exercise of such right. Section 4 of the Act prohibits the promotion or conduct of certain prize competitions, and not all, and the prohibition shall be *intra vires* if it is found that the restriction imposed is a reasonable one and is to the interest of the general public.

9. While laying down the reasonability or unreasonability of the restriction, the Courts must take a liberal view, and should not proceed with the sole intention to find fault in the enactment. If one school of thought could in good faith place the restriction, it must be held to be reasonable though another class of persons may take a contrary view and may not impose any such restriction. Prize competitions may be a boon to a few individuals, but they can cause a big loss to many. Prize competitions, kindle gambling outlook among people, and induce, them to submit many entries far in excess of their means, with the faint hope that they may be among the lucky few and win a prize. No one pays prizes out of his pocket; prizes are paid out of the entry fee received. Promoters of prize competitions meet all the expenses out of the fees collected and in addition make profit for themselves. Consequently, if the prizes offered are ten in number of a total value of Rs. 10,000/- and the entry fee is Rs. 10/- each, ten persons shall gain at the expense of more than 10,000. Losers shall outnumber the gainers, and their proportion shall be not less than 1000 to 1.

10. If the total value of the prizes to be offered in a month is reduced to Rs. 1000/- and the number of entries in every prize competition to 2000, the proportion of losers shall go down considerably, such that by participating in

prize competitions no one shall become bankrupt. Social workers can, therefore, think of imposing a restriction as contained in Section 4 of the Act.

11. To put it differently, the restriction imposed by Section 4 of the Act is not only reasonable, but is also in the interest of the general public. The prohibition contained in Section 4 is thus within constitutional limits, and is valid.

12. In the instant case, the lower courts have recorded the finding that the applicants were conducting prize competitions in which the total value of the prizes to be offered in any month exceeded Rs. 1,000/-. This finding is supported by the material on record and hence cannot be questioned in revision. Suresh Chandra Agrawal (P. W. 1) made a statement on oath on the basis of his registers. He has clearly deposed that at the instance of the applicants the result of Globe Competition No. 15 was printed by his press along with the programme of Globe Competition No. 17 on receipt of the order placed on 6-4-1956; that the order for the result of Globe Competition No. 16 was placed with the programme of Globe Competition No. 18 on 4-5-1956; and that the order for printing the result of Globe Competition No. 17 was placed on 4-6-1956. The result of Globe Competition No. 17 was printed and the copy of the result so printed is Ex. Ka-6. When no new Globe Competition was printed along with the result of Globe Competition No. 17, it can be inferred that the applicants discontinued this business from 4-6-66, about two months after the coming into Force of the Act. The prizes offered in all these Globe Competitions exceeded rupees one thousand, which was not permissible u/s 4 of the Act.

13. The printing of the Globe Competitions and the results thereof was a step necessary to the promotion and conduct of prize competitions. It was, however, contended by the learned Advocate for the applicants that they could have the competitions and their results printed without the intention of sending the leaflets to anyone. The suggestion thus made is that from the printing of the above leaflets it cannot be presumed that a prize competition prohibited under the law was being conducted or promoted. A normal person would not waste his money by having Globe Competitions and their results printed without the intention of circulating them. The printed leaflets are not meant for decoration. No one would hang such papers in his house, nor would he send them to others unless he was promoting a prize competition. The Courts of law can presume from the printing of competitions and the results thereof that they were so printed for the conduct and promotion of a prize competition and that prizes were to be offered as printed therein.

14. The presumption to be drawn from the printed leaflets is rebuttable but the applicant have not furnished any explanation, nor have they adduced any evidence to prove the purpose for the printing of the leaflets. There is also nothing on record which may suggest that the leaflet were printed for some other purpose.

15. The previous conduct of the applicants is also admissible in evidence in

determining their intention. Section 14 of the Evidence Act runs as below

"Facts showing the existence of any state of mind, such as intention.....or showing the existence of any state of body or bodily feeling, are relevant, when the existence of any such state of mind or body or bodily Feeling is in issue or relevant".

What was the intention of the applicants at the time an order was placed for the printing of the prize competitions and the results thereof, on or after 1-4-1956, was a matter directly in issue and was relevant and consequently, any fact showing such an intention is admissible in evidence. From the material on record it is evident that similar leaflets printed in the past were circulated outside the country for inviting entries; and from the printing of the leaflets on or after 1-4-1956 it can be inferred that they were also printed with the same intention, that is, for the promotion and conduct of prize competitions prohibited under the Act.

16. The next point contended on behalf of the applicants is that even though the prize competition was organized from Bulandshahr, it was not meant for people living within India, and consequently, in the eye of law no offence was committed when the applicants took one step or the other for the conduct of such competition from Bulandshahr.

17. Section 4 of the Act prohibits the promotion or conduct of a prize competition in which the total value of prizes offered exceeds rupees one thousand. The important ingredient of the offence is the promotion or conduct of an illegal prize competition. If such a prize competition is promoted or conducted from within the territory to which the Act extends, it is an offence committed within the territory and hence punishable under the Act, If other acts, but not the promotion of prize competition, were illegal and punishable under the Act, it could be said that on account of illegal act having been done outside the territory, the offender could not be tried within the territory To clarify this point we can cite an illustration, Murder may be committed outside India; but if the conspiracy was hatched within the territory of India, the offenders can be tried by the Indian Courts for the criminal conspiracy though they cannot be so tried for the main offence of murder But if the death was the result of any act done within the territory of India, the offenders can be tried both for conspiracy and the consequences of the act.

18. To get over this difficulty, it was urged by the learned Advocate for the applicants that the main ingredient of the offence punishable u/s 4 of the Act was the offer of prizes exceeding rupees one thousand Section 4 speaks of prizes to be offered and not prizes offered. At the initial stage only an offer is made of prizes which would be offered later and they are actually offered after the scrutiny of entries to find out which of them tally with the official result. We have, therefore, to consider the nature of the offer made at the initial stage and not the prizes actually offered in the end. In other words, the offer of prizes as

contained in the pamphlet can be made the basis of conviction

19. The contract between the promoter of prize competitions and the person submitting entries is complete as soon as he submits the entries, but in the instant case we are not concerned with the acceptance of the offer. The promoters shall be guilty of the offence even if no one responds by submitting entries of the prize competitions. In other words, the existence or non-existence of a valid contract or where contract can be enforced are extraneous considerations which cannot influence the judgment in the present criminal case and they can be disregarded.

20. My attention was also drawn to the fact that the Act applied to only some of the States and not to all the States of India, and the applicants would have committed no offence if they organized the prize competitions for the benefit of persons residing outside India, say, from Assam within India. This factor can be taken into consideration while awarding sentence; but not while laying down whether the accused are guilty or not of the offence charged.

21. The last point raised on behalf of the applicants is that their premises were searched by a C. I. D. Inspector who was not a police officer specially authorized by the State Government u/s 14 of the Act, and consequently not only was the search illegal but anything recovered during the search could not be used against the applicants during the trial. Reliance was placed upon the decision of the Supreme Court in *Delhi Administration Vs. Ram Singh*, wherein Magistrate's order refusing to take cognizance of a report u/s 173(1) Cr. P. C. (to be referred hereinafter as charge-sheet) of a police officer other than a Special Police Officer appointed u/s 13(1) of the Suppression of Immoral Traffic in Women and Girls Act, 1956 was upheld on the ground that that police officer was not competent to investigate the offence and to submit charge-sheet.

22. The provisions of the Act are materially different from those of the Suppression of Immoral Traffic in Women and Girls Act, 1956. Section 13(1) of the Suppression of Immoral Traffic in Women and Girls Act, 1956, clearly lays down that there shall be for each area to be specified by the State Government in this behalf a Special Police Officer appointed by or on behalf of that Government for dealing with offences under the Act in that area. The words "dealing with" are of great significance suggesting that only Special Police Officers can investigate offences under this Act and submit charge-sheet. Further, as held by the Supreme Court, this Act is a complete Code with respect to what is to be done under it. On the other hand, Section 14 of the Act (The Prize Competitions Act) has been worded differently, and the Act does not lay down any special procedure for the detection and investigation of offences under the Act. The only provision of a procedural nature contained in the Act is Section 14, which runs as below:

"14. Power of entry and search.-- (1) It shall be lawful for any police officer not below the rank of sub-inspector authorised by the State Government in this

behalf by general or special order in writing-

(a) to enter it necessary by force, whether by day or night, with such assistants as he considers necessary, any premises which he has reason to suspect are being used for purposes connected with the promotion or conduct of any prize competition in contravention of the provisions of this Act;

(b) to search the premises and the persons whom he may find therein;

(c) to take into custody and produce before a Magistrate all such persons as are concerned against whom a reasonable complaint has been made or credible Information has been received or a reasonable suspicion exists of their having been concerned with the user of such premises for purposes connected with, or with the promotion or conduct of, any prize competition in contravention of the provisions of this Act; and

(d) to seize all things found therein which are intended to be used or reasonably suspected to have been used In connection with such prize competition.

(2) All searches under this section shall be made in accordance with the provisions of the Code of Criminal Procedure- V of 1898"

23. The maximum sentence which can be awarded for an offence under the Act is three months and hence such offences are ordinarily not cognizable. Had Section 14 not been incorporated in the Act, no police officer could investigate an offence under the Act, nor could he search the premises, without the prior permission of a competent Magistrate. An arrest or search made without the Magistral permission would have been illegal and this is why it was specifically provided In Section 14 that U shall be lawful for a Special Police Officer to search the premises and to arrest the offender. By virtue of this provision, offences under the Act are as far as Special Police Officers are concerned, cognizable. In case other police officers can deal with such offences, they shall as far as such officers are concerned, continue to be non-cognizable and they can make investigation in accordance with the Code of Criminal Procedure after obtaining the permission of the Magistrate concerned.

24. A consideration of Section 14 of the Act makes it clear that it does not lay down any new or special procedure. Sub-section (2) thereof makes it clear that all searches under the section shall be made in accordance with the, provisions of the Code of Criminal Procedure. Further Sub-section (1) merely reproduces the corresponding provisions of the Code of Criminal Procedure subject to such modifications as were accessory for the detection of an offence under the Act. It shall be found that Clause (a) of Section 14(1) of the Act corresponds to Section 48 Cr. P. C, Clauses. (b) and (d) to Sections 103 and 102 (3) Cr. P. C. and Clause (c) to Sections 54 and 60 Cr. P. C. In other words, the Act is not a complete Code and for the detection and investigation of offences under the Act even the Special Police Officer has to fall back upon and follow the provisions of the Code of Criminal Procedure. What the Act makes a provision for is that as far as Special

Police Officers are concerned the offence is cognizable. When the offences under the Act were not declared cognizable, the Courts can hold that except for Special Police Officers the offences continue to be non-cognizable and other police officers can make investigation in accordance with the Code of Criminal Procedure, after obtaining the permission of the Magistrate concerned. This is what was done in the instant case. There was thus no irregularity in the police investigation, and the Magistrate could take cognizance of the offences based on the search made by the C I D Inspector. To put it differently, the conviction of the applicants cannot be set aside simply because the search was not made by a Special Police Officer.

25. To sum up, by promoting and conducting prize competitions in question from Bulandshahr, the applicants contravened the provisions of Section 4 of the Act and were rightly convicted of the offence punishable u/s 9 of the Act. However, their conviction u/s 11 of the Act also was not proper in any case, was not necessary. Section 11 has been incorporated to punish those persons who do any of the specified acts with a view to the promotion or conduct of any prize competition. Where the promoter of the prize competition or a person who conducts it himself does one of such acts, he can be punished as promoter and it is not necessary to punish him separately for doing a lesser act with a view to the promotion or conduct of the prize competition. In the circumstances, the conviction and sentence u/s 11 of the Act can be set aside.

26. The revision partly succeeds and partly fails. The conviction and sentence of the applicants as awarded by the learned Sessions, for the offence punishable u/s 9 of the Prize Competitions Act for contravention of Section 4 thereof are maintained, but the conviction and sentence u/s 11 of the Act are set aside. For purposes of the record, it is further ordered that the sentence in case of non-payment of the fine of Rs. 500/- each shall be 15 days. Section 1 each understand that the fine has already been deposited. In such a case any amount deposited in excess shall be refunded to the applicants.