

(1998) 07 KL CK 0029
In the High Court Of Kerala
Case No : O.P. No. 2132 of 1996-D

M.V. Bahuleyan and Others	Vs	APPELLANT
State of Kerala and Another		RESPONDENT

Date of Decision : 15-07-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)
Kerala Chitties Act, 1975 — Section 3(5)

Citation : AIR 1999 Ker 17 : (1998) 94 CompCas 577 : (1998) 4 RCR(Civil) 425

Hon'ble Judges : K.A. Abdul Gafoor, J

Bench : Single Bench

Advocate : S.A. Nagendran and Premjith Nagendran, for the Appellant; C.A. Joy, Govt. Pleader, C.N. Ramachandran Nair and Antony Dominic, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Abdul Gafoor, J.—Petitioners have approached this Court challenging Sub-section (5) of Section 3 of the Kerala Chitties Act, 1975 as ultra vires, and unconstitutional and seeking a direction to grant permission to the petitioners to conduct chitties of more than Rs. 25,000/-. The said provision reads as follows :--

"No foreman shall be entitled to conduct at a time chitties, the aggregate amount of which exceeds:--

(a) Where the foreman is a banking company as defined in the Banking Regulations Act, 1949 (Central Act 10 of 1949) or a corresponding new Bank constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (Central Act 5 of 1970), 60% of the net assets of the foreman.

(b) in other cases, 50% of the net assets of the foreman :

Provided that the chitty amount in the case of any one chitty conducted by a foreman shall not exceed twenty five thousand rupees ;

Provided further that the maximum limit specified in the foregoing proviso shall be two lakhs rupees in the case of any chitty of which the foreman is a banking company as defined in the Banking Regulations Act, 1949 (Central Act 10 of 1949) or a corresponding new bank constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (Central Act 5 of 1970)

Provided also that nothing contained in this sub-section shall apply in the case of any chitty of which the foreman is a company owned by the Government of Kerala.

Explanation :-- In determining the net assets of a foreman for the purposes of this sub-section, the amount of the security furnished by him u/s 15 shall be excluded if such amount is the amount of subscription received in advance from the subscribers".

2. It is true that the said provision classifies the individuals and also the Government Companies and Banking Companies that they are granted privileges to conduct chitties in different manner. As per Clause (a), no Banking Company will be entitled to conduct at a time chitties, the aggregate amount of which exceeds 60% of the net assets. In the case of individuals, that is limited only to 50%. The petitioners contended that this is a discrimination. Chitties Acts a legislation intending to safeguard the interest of the public and to safeguard the amount invested by them. In such circumstances, there is nexus in classifying the Banking Companies defined in terms of Banking Regulation Act or a new Bank constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 on one side and persons or bodies other than such Banking Companies on the other side. The Banking Companies are being controlled and regulated by the Reserve Bank and always their financial dealings will be watched by the banker of the banks. But, at the same time, there will be no close watch on the dealings of other companies, or individuals. Therefore, such classification contained in Clauses (a) and (b) of Section 3(5) of the Act cannot be said to be arbitrary or illegal

3. The first proviso to the said provision contains a ceiling of Rs. 25,000/- for a chitty conducted by a foreman. Therefore, petitioners can conduct a chitty for a maximum amount of Rs. 25,000/-. The second proviso carves out an exemption to the first proviso, enabling the banking companies to conduct a chitty up to the limit of Rs. 2 lakhs. The third proviso still gives further exemption to a Company owned by the Government of Kerala to conduct chitties without any such limit. Petitioners submit that these exemptions from the main proviso granted to the Banking Companies and also to the Companies owned by Government of Kerala are discriminatory, as the petitioners are unable to conduct chitties exceeding Rs. 25,000/-.

4. Here also, the self same consideration of safeguarding the amount invested by the public arises. If individuals are allowed to conduct chitties worth any amount, that will necessarily impair the interest of the general public. In the case of

default by a foreman, the general public shall get back the amount invested by them. In respect of Banking Companies, there will be safeguard, as such Banking Companies are subjected to several regulations, including those issued by the Government of India and the Reserve Bank of India. That is why the legislature thought of granting an upper limit of Rs. 2 lakhs in the matter of chitties conducted by such Banking Companies. Thus, the classification as contained in the 2nd proviso to Section 3(5) of the Kerala Chitties Act, cannot be said to be ultra vires, violating Article 14 of the Constitution of India.

5. The third proviso permits "Company owned by Government of Kerala to conduct chitties without any limit". The dealings of Government Company always stands on a different footing as it is owned by the Government of Kerala and that itself is a safeguard to the investing public. In such circumstances the third proviso to Section 3(5) enabling a Company owned by Government of Kerala to conduct chitties without any limit also cannot be said to be discriminatory violating Article 14 of the Constitution of India.

6. Petitioners are not debarred from conducting any chitty business by the said provisions. They are free to conduct chitty up to Rs.25,000/-in terms of the said provisions. Thus, there is no denial of the fundamental right guaranteed to them under Article 19(1)(g). Reasonable restrictions are always permissible by appropriate law and the provision imposes only such restrictions on private individuals or companies while dealing in fiscal matters with other individuals. Such restrictions are always permissible as general public will be affected by the fiscal dealings by the persons like the petitioners. Therefore, Section 3(5) cannot be said to be ultra vires to Article 19(1)(g) as contended by the petitioners.

7. Moreover, this Hon''ble Court has held in Krishnan v. State (1996) 1 KLT 383 that any favourable treatment given to the State owned enterprises or Co-operative Societies cannot be held to be violative of Article 19(1)(g) of the Constitution.

Thus, the original petition fails. Dismissed. No costs.