

(1896) 12 MAD CK 0009
In the Madras High Court

Panchena Manchu Nayar and Others

APPELLANT

Vs

Gadinhare Kumaranchath Padmanabhan Nayar

RESPONDENT

Date of Decision : 16-12-1896

Acts Referred:

Companies Act, 1956 — Section 4

Citation : (1897) ILR (Mad) 68

Hon'ble Judges : Subramania Ayyar, J; Davies, J

Bench : Division Bench

Judgement

1. From the instances which have come before this Court since Ramasami Bhagavathar v. Nagendrayyan ILR 19 Mad. 31 was decided, it would

seem that a notion is coming to be entertained that every chit or kuri in which more than twenty persons are concerned falls within Section 4 of the

Indian Companies Act and, therefore, if unregistered, is illegal. It is scarcely necessary to point out that whether an undertaking which generally

goes by the name of chit or kuri falls within the said Section, depends, of course, not upon the mere name given to the undertaking, but on the

existence of the essential characteristics required by that provision of the law. Whether these requirements are present must be ascertained in each

case. In the present instance the Subordinate Judge has paid attention to this matter. He has taken evidence as to it and has come to the conclusion

that the case is not governed by the above-mentioned Section 4 and is distinguishable from Ramasami Bhagavathar v. Nagendrayyan ILR 19 Mad.

31.

2. The question is whether the Subordinate Judge's view is correct upon the facts established by the evidence. Now, in cases like the present, to

warrant the application of the Section in question, the first point to be made out is that there is a "company" or "partnership" or "association"

consisting of more than twenty persons. It cannot be pretended that there is here either a "company" or a "partnership". Is there then an

"association" of more than twenty persons within the meaning of the Act? The answer to this question depends upon the signification to be attached

to the word "association" in the Section. This and certain other points as to the construction of the corresponding Section of the English statute,

the words of which are identical with those of the Section of the Indian Act, underwent elaborate consideration in *Smith v. Anderson* L.R., 15

Ch.D. 247. There James, Brett and Cotton, L. JJ., differed from the construction put upon the Section by Jessel, M.R.

3. For our present purpose it is enough to quote a couple of passages from the judgments of Brett and Cotton, L.JJ., which deal with the

interpretation of the term "association". The former observed: "'In order to come within this clause, there must be a joint relation of more than

twenty persons for a common purpose... I confess I have some difficulty in seeing how there could be an association for the purpose of carrying on

a business which would be neither a company nor a partnership, but I should hesitate to say that, by the ingenuity of men of business, there might

not some day be formed a relation among twenty persons which, without being strictly either a company or a partnership, might yet be an

association. But according to all ordinary rules of construction, if the association mentioned in Section 4 is not, strictly speaking, a company or a

partnership, it must be something of a similar kind. It must be a relation established between twenty persons or more "for the purpose of carrying

on business," i. e., in order that such company, association, or partnership may carry on the business. The business, therefore, whatever the word "

business" may mean is to be carried on by those twenty persons or more.'" COTTON, L.J., used the following language: "'I do not think it very

material to consider how far the word "association" differs from company or partnership, but I think we may say that if "association" is intended to

denote something different from a company or partnership, it must be judged by its two companions between" which it stands, and it must denote

something where the associates are in the nature of partners.

4. Clearly, therefore, to constitute an association, within the meaning of the Section, the existence of a legal relation between more than twenty

persons giving rise to joint rights or obligations or mutual rights and duties is absolutely necessary. Otherwise there would be a mere

conglomeration of persons as COTTON, L.J., put it, but not an "association."

5. Turning now to the facts of the present case it is perfectly plain from Exhibit I, which sets forth the terms on which the kuri is carried on, that no

such relation exists between the various persons who have executed the document. The contracting parties are on the one hand, Kunhi Krishna

Nayar and Panku Nayar, who organised the kuri, and who are called the proprietors in Exhibit I, and on the other, each of the remaining ticket-

holders individually. The right to collect the subscriptions due periodically by each ticket-holder rests only with the two organisers. The duty of

paying the amount collected to the person entitled is cast upon them. It is to them that unlike in the case of Ramasami Bhagavathar v.

Nagendrayyan ILR 19 Mad. 31 the particular ticket-holder who, as the prize winner, has received the periodical collection, has to give the

necessary securities for the payment of the future instalments due by him. Further, if any ticket-holder commits any default in paying his

subscriptions according to the instalments, the proprietors alone are responsible to make up the deficiency caused by such default and are,

consequently, at liberty to admit at their discretion persons not mentioned in Exhibit I as ticket-holders in lieu of the defaulters. The only obligation

each ticket-holder lies under, is to pay his subscription from time to time to the proprietors; and the only right possessed by him is to get from them

his several share of the Rs. 25 deducted at the drawing of each lot out of the total collections and distributed among the ticket-holders other than

those who have received prizes and also to receive from the same parties the amount of the prize when he in his turn becomes the prize winner. It

is thus manifest that the only persons associated with each other in the sense of possessing joint rights or being subject to joint obligations or of

having mutual rights and duties are the two proprietors, whilst the other ticket-holders are in the language of JAMES, L.J., "from the first entire

strangers who have entered into no contract whatever with each other.

6. It follows therefore that the very first condition laid down by the Section relied

on is wanting here.

7. In arriving at the above conclusion, we have not overlooked the observation made in one of the cases cited, to the effect that no hypercritical

attempt should be made to withdraw from the operation of the legislative provision in question any case which reasonably falls within its purview.

This is no doubt true. On the other hand, it is to be borne in mind that the enactment was intended, as stated by JAMES, L.J., "to prevent the

mischief arising from large trading undertakings being carried on by large fluctuating bodies, so that persons dealing with them did not know with

whom they were contracting, and so might be put to great difficulty and expense, which was a public mischief to be repressed." When an Act

framed with such intention is sought to be availed of for getting rid of obligations incurred in connection with comparatively small undertakings like

the present, carried on the responsibility of a very few known individuals and resorted to by ticket-holders from prudential motives as a means of

effecting some savings from their petty incomes, it is the duty of the Courts to guard against the extension of the statute, from an undue zeal for

carrying out the policy of the enactment, to cases clearly not within its meaning.

8. Being satisfied, as already stated, that here the very first requisite under the Section has failed, it is unnecessary to consider the other question

which was argued at length, viz., assuming that the ticket-holders and the proprietors do constitute together an association of the kind

contemplated by the Section, whether the association can be said to have been formed for the purpose of carrying on business, having for its

object the acquisition of gain.

9. We agree, therefore, with the Subordinate Judge's conclusion and dismiss the petition with costs.