(1986) 02 BOM CK 0015

In the Bombay High Court

Case No : Criminal Writ Petns. No''s. 49 and 51 of 1985

Santosh Enterprises, Amravati and others APPELLANT

Vs

State of Maharashtra and another RESPONDENT

Date of Decision : 03-02-1986

Acts Referred:

Penal Code, 1860 (IPC) — Section 294A

Citation : (1986) 2 RCR(Criminal) 451

Hon'ble Judges : V.A. Mohta, J;B.G. Deo, J

Bench : Division Bench

Judgement

V.A. Mohta, J.—The petitioners are dealers in plots and various costly consumer goods, such as T.V. sets, mopeds, refrigerators etc. They advertise various schemes by which members of the public interested in purchasing the plots/ articles are invited to enroll themselves as members. The number of members registered ranges from 150 to 250. Specified price of the article is to be paid in 40 monthly instalments. Every month one draw is taken out. The member whose name is declared in the draw is entitled to get the plots/article without being required to pay the further instalments. Lucky person from that stage ceases to be a member of the scheme. This exercise goes on for 40 months on expiry of which the unlucky remaining members are entitled to get the plots/article at a specified price or refund without interest of the amounts deposited.

2. As against 6 of the petitioners, offences under S. 4 of the Bombay Lotteries (Control and Tax) and Prize Competitions (Tax) Act, 1958 (the Act) are registered and their business premises have been raided during the course of investigation of the offences. The other petitioners are apprehensive of similar actions against them. They have rushed to this Court making a grievance that the schemes promoted by them are perfectly legal and valid, they do not violate any provisions of the Act and have prayed that by appropriate writ, order or direction the registration of the offences should be quashed and the police machinery be restrained from conducting raids or any further investigation in the matter.

Pivotal question is - such a Scheme a "lottery" as envisaged in the Act ?

3. The object of the Act is to control lotteries and prize competitions in the State of Bombay. S. 2(1) defines ''lottery'' as follows :

"Lottery" does not include a prize competition; S. 3 lays down that save as provided by this Act, all lotteries are unlawful. S. 4 makes the promotion of a lottery an offence. S. 5 provides for grant of licence for promotion of a lottery as an incident of entertainment. S. 6 deals with licence in respect of private lotteries. S. 32 excludes from the operation of the Act lotteries (i) organised by the Central or State Government and (ii) specially authorised by the State Government. S. 33 makes S. 294A of the Penal Code inapplicable in the areas to which the Act extends.

4. As the term "lottery" as such is not defined in the Act, resort to its dictionary meaning is inevitable. New Webster''s Dictionary (page 565) assigns the following meaning to the term :

"A game or method of fund raising, for public, charitable, or private purposes, by sale of numbered tickets which, when drawn by chance, entitle the holders to prizes; any affair or happening that seems determined by lot or chance."

We also notice at this stage for the reasons which follow dictionary meaning of the words "Betting" and "Gambling" :

Gamble "To play at any game of chance for stakes; to stake or risk money or anything of value on something involving chance or unknown contingencies; to take a risk, to stake, bet or wager; to squander by betting, us followed by away; a venture in or as in gambling; any matter or thing involving risk or uncertainty."

Bet "A wager; that which is laid, staked, or pledged on the result of any uncertain question or event; the terms on which a bet is laid."

The relevance of noticing also the dictionary meaning of the above two words lies in the necessity to consider the extent of width of Entry 34 in List II of the Constitution which reads :

"Betting and gambling".

5. We will first take up the submission that unless a "lottery" is of gambling type it cannot be hit by the Act and any other construction put on this undefined word would render this State legislation void for want of legislative competence as the topic of "lottery" as such is not independently covered by any Entry in the State List. In our judgment, the submission has merely to be stated to be rejected as it suffers from a basic fallacy. Gambling denotes a general phenomenon and lottery is but one species of that phenomenon. A bare look at dictionary meaning of the two words leaves no doubt on the question. Determining common factor in both is - is anything at stake ? Lottery has always been considered obnoxious everywhere - though in varying degrees. It is unthinkable that Constituent Assembly would forget such an important subject while preparing three lists in

the VIIth Schedule. Quite obviously, therefore, subject of lottery must have been considered as a part of general subject of "gambling" which terminology must have been used in the popular and wider sense to convey all its forms including lottery, wagering, gaming and the like. It is thus difficult to imagine a lottery having no element of gambling in it. In this connection, S. 3 of the Act may be noticed. It makes all lotteries unlawful - save as provided by the Act. Only particular lotteries are permitted and that too on obtaining licence as required under Ss. 5 and 6.

6. We now turn to the next question - what are the essential ingredients of a "lottery" and whether they are present in the Schemes in question. We do not seem to operate upon a virgin field. Several times before, the subject of lottery has been dealt with by Indian as well as English Courts. This Court in the case of State of Bombay Vs. R.M.D. Chamarbaugwalia and Others, has considered all leading English cases (paras 10 to 14) and in the case of Govardhandas v. State of Maharashtra, Criminal Revn. Appln. No. 15 of 1967 decided on 27th September 1967 all Indian cases including the case of Venkataramana v. Setti Sanyasayya, AIR 1934 Mad. 136 on which strong reliance is placed on behalf of the petitioners. The later decision has a direct bearing on the question as it interpreted a similar if not the exact scheme vis-a-vis the provisions of the Act. Following observations to which we have our respectful concurrence pithily express the correct legal position :

"From the cases available on the subject, it appears that the main ingredient of a lottery is the buying of a chance. It is not the essence of the lottery that there would be a prospect of losing everything that is paid while participating in the lottery. Mr. Manohar has analysed the scheme of the present petitioner and says that not one of the participants of the 50 subscribers stood to loss anything. Each one of them would pay a maximum amount of Rs. 240/- in 12 monthly instalments and would get a bicycle in return. Nobody''s money was lost. Out of the trade profits that the petitioner might have made on sale of 50 bicycles, he is selling out a portion for the purpose of giving prizes. However, closely analysed it appears that it is the subscribers who are paying collectively for the chance of the winners to get the prizes. The bet offered or the allurement offered, is that one might get a bicycle even by paying one instalment of Rs. 20/-. If the subscriber might get a bicycle on payment of two instalments and likewise it is the hope or chance of getting a cycle at a cheap rate that attracts every one of the 50 members. It may be that only 11 persons are lucky in varying degrees having paid anything from Rs. 20/- to Rs. 220/-. However, all the 50 entrants collectively contributed and the guiding force for each one of them was to buy the chance of getting a cycle at a very cheap rate by coming in the 11 lucky members. It is this chance which makes the present scheme a lottery. It is no answer to say that every one of the 50 subscribers was going to get a bicycle."

7. Element of buying of a chance is the essence of the Schemes in question also. It is contended that the Schemes are helping the economically backward people

to purchase costly properties which they otherwise cannot even dream of purchasing and are thus in their interest and the prize is merely an incentive for the sale promotion Scheme. After all, even those unlucky, whose names are not declared in any draw, the argument proceeds, get back their money and lose nothing except perhaps relatively ''negligible'' amount of interest. Now, as observed in State of Bombay Vs. R.M.D. Chamarbaugwalia and Others, "the Court will not merely look on the face of the scheme, but will go deeper than that into the real scheme as it emerges from a close examination". So examined, it will be clear to any discerning mind that the Schemes have sinister features and have tendencies for exploitation of a vast number of persons generally of slender means for whom getting money at right time even for their genuine needs is difficult. They are persuaded by means of irresistible propoganda and publicity to believe that they stand a chance of getting a fortune by making small periodical contributions. They are further impressed with the idea that even if they are unlucky they stand to lose almost nothing as the Scheme provide for refund of the whole amount after the last lot is drawn. People are either greedy or ignorant or both. There is always a dormant desire to gamble in every human being and all these weaknesses are fully exploited by these Schemes. Ignorant people do not realise in a moment of weakness the money value of retaining the amount for a long period, which goes up to nearly 4 years. The promoters of such Schemes stand to gain and the contributors stand to lose a huge amount by way of interest. Commercial current rate of interest even for a reputed business is nearly 18% per annum - by and large, that is also a bank rate of interest - and after periodical credits the amount of interest becomes equivalent to principal in four years. Surely, poor people with slender means cannot get loan at that rate of interest which in their cases is manifold than the normal. The people fall prey to these illusory temptations and remain either half hungry or cut down their genuine needs for fulfilling the obligations imposed under the Schemes. Examples are not unknown where people have even pledged their utensils to obtain loans at astronomical rates of interest, solely with a view to participate in such Schemes. Thus, their structure is based on a chance and one cannot be guided merely by a facade. These Schemes thus have a great anti-social impact. Many times people need protection against themselves and this is what the Act provides. The Schemes are thus plainly lotteries prohibited by the Act and State is fully justified in doing what it did and is proposing to do.

8. To conclude, petitions dismissed and rules discharged. Needless to mention that stay granted by this Court stands automatically vacated.

9. Petitions dismissed.

