(1967) 12 GUJ CK 0002

In the Gujarat High Court

State of Gujarat APPELLANT

Vs

Jivanlal Bhimjibhai and Another RESPONDENT

Date of Decision : 05-12-1967

Acts Referred:

Bombay Lotteries (Control and Tax) and Prize Competitions (Tax) Act, 1958 — Section 4, 4

Citation : (1968) 9 GLR 603

Hon'ble Judges : A.D. Desai, J

Bench : Single Bench

Judgement

A.D. Desai, J.—This is an appeal filed by the State of Gujarat had directed against the order of acquittal passed by the learned Judicial Magistrate, First Class, Ankleshwar, acquitting the accused of the charge having committed an offence u/s 4 of the Bombay Lotteries control and Tax) and Prize Competitions (Tax) Act, 1958 (hereinafter erred to as the Act). Respondent No. 1 in this appeal was original; used No. 1 and respondent No. 2 was original accused No. 2. The prosecution case is that the accused No. 1 is the owner of Raj bans Benefit company (hereafter referred to as the Company) and the accused No. 2 its Manager. The Company has its head office at Ahmedabad and panches at Surat, Rajkot, Ankleshwar, Junagadh etc. The accused No. 1 1 rented a shop at Anklesbwar. The shop was situated on the station did and on the way to Goya Bazar. The shop was rented since October 28, 1963 for the purpose of running of the business of the Company Police Sub-Inspector, Ankleshwar received an information that the accused were running a prize scheme which was contrary to the provisions the Act. The Police Sub-Inspector, therefore, obtained a search warrant u/s 18 of the Act and carried out a search of the premises on december 9, 1965. Various documents consisting of account books, receipt oks, files etc, were seized by the police. On examination of this record was found that both the accused were running a prize scheme in which 3 members were listed by the accused. Under the scheme a person who shed to become a member had to pay an admission fee of Re. 1/-. He d further to pay a sum of Rs. 5/-for the first month and 25 Paise more i. e. Rs. 5-25, Rs. 5-50, Rs. 5-75 etc. for each subsequent month for 30 months. The total amount of contribution of a member would come to 260/-. The member is given a receipt for the payment. Each member also given a pass book bearing his membership number. Under the neme on 17th of every month a draw for a lucky number card is to arranged. Each member is Informed of this draw. The lucky number is to be chosen by drawing of a lot and this was to be carried out keeping two batches of cards, one batch having cards bearing the member of each member and other batch consisting of blank cards. The batch of blank cards will contain one card on which "Rajhans Benefit Company" is written. A member is asked to pick up a card from the batch consisting of cards bearing the number of each member. He has to place the card on the table. Then he has to pick up one card from the batch of blank cards and place it over the numbered card. This process is to be continued till the card on which "Rajhans Benefit Company" is written is picked up and the prize is given to the member whose number is found on the card which is drawn immediately thereafter from the batch consisting of cards bearing the number of each member. The winner is given a prize of either a cycle or radio or sewing machine of the value of Rs. 200/-. The rules relating this scheme are produced at Ex. 16. The rules are in Gujarati language. The relevant rules are 1, 2, 3, 4, 5, 6, 7, 9, 11 and 12. The rules are translated in English and are as follows:

(1) For joining the Scheme a person shall have to pay Rs. 5/- five for the first instalment and every subsequent instalment 00-25 np. more than the amount paid previously, and this will have to be paid for thirty months. Anadmission fee of Re.) /- shall be paid with the first instalment.

(2) The member shall obtain a printed receipt of the Company on making payment of the instalment. The Company shall not consider any receipt other than the printed receipt as valid.

(3) The result will be declared on every month on the fixed date and member who is declared successful will be given free of charge either one cycle, or one radio or one sewing machine worth Rs. 200/- by the Company for its advertisement.

(4) The members who have paid the full amount of thirty instalments will be given on the 31st month either a cycle or a sewing machine or a radio worth Rs. 260/-. The person who does not desire to take any of the above things will be returned Rs. 260/- in cash.

(5) The responsibility of paying the amount on the due date will be on the member and one who has not paid the amount of instalment in time will not be given benefit of the result.

(6) The name of the member who has not paid two successive monthly instalments will be deleted, presuming that be does not want to becontinued as a member. The member whose name has been so deleted will not get any compensation for the amount paid. And any member who wants to pay the next

instalment shall have to pay 6 np. on each rupee as late fees.

(7) A member can close his account after the full payment of the amount of four instalments by giving an application in writing through post or in person. Such member will be paid the amount after deducting Rs. 20/- from the amount paid on 31st month.

(9) The lucky winner member in the result of the draw will not be given cost price of the goods in any case.

(11) Any member who wants to take any one of the articles in advance shall have to give written application with the fixed amount of deposit. The delivery of the article will be given within 20 days from the date of depositing the amount. He shall have to pay the remaining instalments regularly.

(12) The member who takes any one of the articles in advance shall have to sign the agreement with the company and shall have to give two sureties to be approved by the Company and the Company may sell the article in advance of the value ofRs. 260/-.

The case of the prosecution was that this scheme was a "lottery" as defined in the Act and the accused committed an offence punishable u/s 4 of the Act.

2. The defence of the accused was that he was not guilty of the charge. The accused did not dispute the manner in which the scheme was run but contended that the scheme was not a "lottery" and that the prize of the value of Rs. 200/- was given to the winner free of charge as an advertisement of the Rajhans Benefit Company.

3. The facts proved by the prosecution as to the manner in which the scheme was run by the accused are not disputed in this Court. Shortly stated the scheme was that a member had to contribute in all Rs. 260/-by instalments at the rate of Rs. 5/-and 25 paise more every month i. e. Rs. 5-25 nR, Rs. 5-50 nP. and Rs. 5-75 nP. till the 30th month. On the 17th of the each month there was a draw and the member who was successful was given either a cycle or a radio or a sewing machine worth Rs. 200/-. This process of distributing the prize was to be respected every month till the 30th month. Thus in all 30 prizes were distributed amongst the members. The main features of the scheme were as follows:

(1) Every member received the sum which he contributed at the end of 30th month. He received neither more or less

(2) No member lost any portion of the amount subscribed Every member knew that he had to subscribe in all Rs. 260/- and he would receive an article of that value or the said sum at the end of 30th month.

(3) The prize, that is, either a cycle, or a radio or a seeing machine of the value of Rs. 200/- was to be given to the winner in the draw. The said prize was given by the Company free of charge. The members did not contribute any amount towards the costs of this prize.

Now Section 2(a) of the Act defines the term "lottery" negatively. The definition provides that a lottery does not include a prize competition. Prize competition is also defined by the Act and it adopts the definition of the term as given in the Prize Competition Act, 1958. There is no dispute that the present scheme does not fall within the meaning of the term "Prize Competition" as defined in the Prize Competition Act, 1958. Section 3 of the Act provides mat save as provided by this Act all lotteries are unlawful and Section 4 lays down the penal provision for carrying on lotteries in contravention of the provisions of the Act. Section 5 of the Act provides that a lottery promoted as an incident of an entertainment shall be deemed to be an unlawful lottery unless the promoter thereof has obtained a licence in respect of such lottery. Section 6 otthe Act provides that a private lottery shall be deemed to be an unlawful lottery unless the promoter thereof has obtained a licence in respect of such lottery. These are the relevant provisions of the Act for our purpose, and it is manifest that the Act nowhere specifically defines the word "lottery".

4. Mr. Vidyarthi argued that a prize was distributed amongt the members by drawing a lot and this contained an element of chance and, therefore, the scheme was a lottery. The argument of Mr. Vidyarthi was that the present scheme was a lottery and that all lotteries are declared unlawful and, therefore, the accused had committed an offence punishable u/s 4 of the Act. The term lottery has no technical meaning in law as distinct from its popular significance. Webster''s Dictionary defines lottery as a scheme for the distribution of prizes by chance, in which a number of tickets are sold, one or more of which draw prizes. Shorter Oxford English Dictionary defines lottery as an arrangement for the distribution of prizes by chance among persons purchasing tickets. In Halsbury''s Law of England, Third Edition, Volume 18, the test for determinating whether a scheme is a lottery or not is laid down. The relevant passage is at pages 239 and 240 and it runs as under:

Therefore, if some of the adventurers have, however, indirectly, contributed to the fund out of which the prizes are to be paid they risk the amount of their contributions, and in such a case it is immaterial that others who have contributed nothing may win the prize. Conversely, it is not essential that the fund out of which the prizes are provided should consist only or at all of sums contributed by the adventurers; nor does the fact that every adventurer in any event obtains some or even full value for his subscription prevent scheme from being a lottery. It seems, however, that when the chances of a prize are obtained wholly gratuitously, and when therefore, none of the adventurers risks anything, the scheme would not be a lottery it seems that the substantial object of the whole scheme will be looked at in order to ascertain whether it is a lottery. Where the scheme has for its object the carrying on of a legitimate business, the fact that it provides for the distribution of its profits in certain events by lottery will not vitiate the scheme.

Definitions of a lottery show that there are four essential elements which constitute a lottery and they are (1) Prize or some advantage in the lieu of prize, (2) Distribution by lot or chance, (3) Contribution or consideration paid or promised and (4) Risk or loss.

5. Having noticed the meaning of the term lottery and the test to determine what lottery is, I shall now examine the scheme of distribution of benefits in the present case. The main fact that emerges from the scheme is that there is absolute certainty with regard to the return of the capital that a member invests. The dominant feature of the scheme is that it enables a member to get either a radio, or a cycle or a sewing machine, which are now-a-days articles of daily necessity, by paying the value thereof by instalments. At the end of every month a prize is distributed by drawing of a lot amongst the members but the distribution of the prizes is for the advertisement of the Company and probably as an incentive to attract persons to become members of the Company and to get benefit of the scheme. The member of the scheme does not contribute towards the cost of the prize but it is distributed at the cost of the Company. It is true that a prize is provided for and there is an element of chance in the distribution of the prize but this is incidental to the main scheme providing for the purchase of the articles by instalments and is wholly gratuitous involving no element of risk. A member if he joins the scheme has to pay his entire contribution in the scheme irrespective of his getting the prize. A member who desires to close his account has to give an application in writing to the Company and can close his account only after the payment of 5 instalments. In that case the member is returned his instalments after deducting Rs 20/-therefrom. The scheme also provides that a member who desires to purchase the article in advance had to give a written application with a fixed amount of deposit and has to satisfy the conditions laid down in Rule 12. The member can thus obtain either a radio, or a cycle or a sewing machine in advance. The main object of the scheme, therefore, is to facilitate the purchase of either a radio or cycle or sewing machine by instalments and the distribution of the prizes is merely incidental to this dominant object. The member gets the prize gratuitously and he does not contribute anything to its costs. The object of the scheme is to carry on a legitimate business of providing the articles by instalments. Such a scheme, cannot be said to be a "lottery" and therefore, cannot offend any of the provisions of the Act. The part of the scheme relating to the distribution of prizes is incidental to the main scheme of providing for the purchase of articles by instalments and it cannot fall within the provisions, of the Act. It is material to note that Section 5 of the Act provides that a lottery promoted as an incident of an entertainment shall be deemed to be an unlawful lottery. The section creates a fiction and includes within the word lottery a lottery promoted as an incident of entertainment. It is clear, therefore, a lottery which is incidental to a scheme the main object of which does not fall within the meaning of lottery cannot be said to contravene the provisions of the said Act unless the scheme or enterprise relates to an entertainment.

6. Mr. Vidyarthi relied on the decisions in Universal Mutual Aid & Poor Houses

Association, Limited, Madras v. A.D. Thoppa Naidu and Ors. AIR 1931 Madras 16; Public Prosecutor Vs. M. Munisami Naidu, ; Sesha Ayyar v. Krishna Ayyar AIR 1936 Mad 225 and Emperor v. Syed A.M. Vazirally T.L.R. 53 Bom 57. Whether a scheme for the distribution of prizes falls within the meaning of lottery or not is a question of fact depending on the manner in which the scheme is worked. The scheme of distribution of prizes in the aforesaid cases was quite different than the scheme in the present case. The decisions are thus distinguishable and it is, therefore, not necessary to discuss these cases in detail.

7. The main object of the scheme in the present case is to provide an opportunity to members to purchase either a radio or a cycle or a sewing machine by instalments and the distribution of the prize is only incidental to the said scheme. The prize is distributed free of cost and the member has not to contribute any amount towards the cost of the articles to be distributed. The member is only given the article and he is not entitled to the value thereof. At the end of the 30th month the member is entitled to claim a radio or a cycle or a sewing machine bearing the mark of Rajhans Benefit Company. I, therefore, hold that the present scheme does not fall witiiin the meaning of the terms lottery and the learned trial Magistrate was right in holding that the accused had not contravened any of provisions of the Act in running the scheme.

The appeal of the State is, therefore, dismissed.