
(1963) 08 BOM CK 0005

In the Bombay High Court

Case No : Appeal No. 8 of 1962 and Miscellaneous Petition No. 144 of 1960

The State of Maharashtra and Another

APPELLANT

Vs

Bennett Coleman and Co. Ltd. and Another

RESPONDENT

Date of Decision : 28-08-1963

Acts Referred:

Betting and Lotteries Act, 1934 — Section 22, 22(1), 22(1)(C), 26, 26(1)
Bombay Lotteries and Prize Competitions Control and Tax Act, 1948 — Section 2(1)
Prize Competitions Act, 1955 — Section 2

Citation : AIR 1964 Bom 213 : (1964) 66 BOMLR 147 : (1964) CriLJ 384

Hon'ble Judges : Chainani, C.J;Mody, J

Bench : Division Bench

Advocate : H.M. Seervai, General and T.R. Andhyarujina, for the Appellant; M.P. Laud, N.A. Palkhivala and S.J. Sorabjee, for the Respondent

Judgement

Chainani, C.J.—The respondents in this appeal are the original petitioners. The first respondents are a public limited company and are the publishers of several important dailies and weeklies in India, including the well known weekly called the Illustrated Weekly of India. The second respondent is one of the Directors of this Company. In one of their daily papers; the Times of India, the respondents publish every day a crossword puzzle for the intellectual amusement of its readers. No fee is charged for entering this contest and the clues are such that there is only one word which fits with each clue. Prior to 1953 the respondents also conducted in the Illustrated Weekly of India a com. petition which was known as ""the commonsense Crosswords". In this competition there was more than one solution or apt word for each missing word, but there was an adjudication committee which used to decide which one of the alternatives was the most apt word. This competition was held to be of a gambling character by this Court in State of Bombay Vs. R.M.D. Chamarbaugwalia and Others, and by the Supreme Court in The State of Bombay Vs. R.M.D. Chamarbaugwala, . It was therefore discontinued. In 1955 the Prize Competitions Act, 1955, came into force. The Constitutional validity of this Act was challenged before the Supreme

Court in R.M.D. Chamarbaugwalla Vs. The Union of India (UOI), . The Supreme Court held that this Act as well as the Bombay Lotteries and Prize Competitions Control and Tax Act, 1948 applied to prize competitions, which were essentially gambling in their character and that they did not apply to competitions in which success depended to a substantial degree on skill. In 1956 the petitioners started a new competition known as "Quotes." The first Quotes competition (Quotes No. 1), was published in the Illustrated Weekly of India in October 1956. The competition is presented in the form of a cross word square and most of the words in it are from quotations, which according to the petitioners are taken from popular books of well known authors or which are otherwise memorable or deserve to be preserved. Competitors are asked to supply the words actually used by the authors. One letter of each missing word is kept blank in the crossword square. To help the competitors a list of words, which includes the missing words, is also published. (This list was however not given in Quotes Nos. 8 to 15). For each missing word two alternatives are suggested one being the word actually used by the author in the quotation and another word referred to in the evidence as the fill in word. Care is taken to see that this word also fits in the quotation and "reads smoothly with the rest of the sentence," The two alternative words such as Tiny Tidy, Bold-Cold, Roof--Room. Din--Don, differ from each other only In respect of one letter, which is kept blank in the crossword table. In a few competitions more than two words were suggested for one missing word. From the letters printed in the crossword table and the list of words given, it is easy to find out in respect of each missing word the alternative words from which the correct word is to be chosen to complete the quotation. From Quotes No. 6 apart from the missing words in the quotations, the crossword square also contains blank spaces for a few other words, but these are such that with the aid of the clues given it is easy to find them. The competition therefore essentially consists in spotting the correct words for the missing words in the quotations. There is only one correct answer or solution in respect of each missing word and that is the word used by the author in his original work. Each competition is stated to be "open to all readers" and a reader can submit more than one entry. The names of the authors of quotations and the correct solutions are published in subsequent issues of the Illustrated Weekly, but the names of the books from which the quotations were taken are not so published.

2. Although the Illustrated Weekly is published every week there is only one quotes competition for each month. Two entry forms are given in each issue and they are not available otherwise. The number of quotations has varied from time to time, but at the date of the petition it was generally 13. Initially no entry fee was charged and no prizes were offered, but the names of those, who sent in all correct entries, were published. From Quotes No. 2 Rs. 50 in book prizes were offered, but there was no entry fee. The prize was increased to Rs. 250 and subsequently to Rs, 500. From quotes No. 12 the prize was increased to Rs. 5000 and an entry fee of one rupee per entry was charged. The number of entries for this competition was 7020. The prize continued to be Rs. 5000 until

Quotes No. 18 and the entries for competitions Nos. 13 to 18 varied between 4407 for Quotes No. 15 and 10,790 for Quotes No. 16. The prize for Quotes Nos. 19, 20 and 21 was increased to Rs. 7500 and the entries for those competitions were 13,590, 11,687 and 11,770 respectively. From Quotes No. 22 the prize was further raised to Rs. 10,000. It has remained at this figure except about three times a year, when on special occasions like the Republic Day, Divali, etc. the prize offered is Rs. 15,000. On these occasions the number at quotations is increased to 14. The entries (or the other competitions from Quotes No. 22 to No. 57, except for Quotes No. 42, varied between 9080 for Quotes No. 25 and 20,058 for Quotes No. 32. For Quotes No. 42 they were 7637. For Quotes Nos. 36, 45 and 51, when the prize offered was as. 15,000, the Entries were 25,504, 27,917 and 28,488 respectively. An increase in the amount of the prize therefore also led to a substantial increase in the number of entries. The first prize is awarded to competitors: with all correct solutions. Runners up prizes are given to competitors with one or two errors. Those with three errors also get a prize when there is no all correct entry.

3. In Quotes No. 12, which was the first competition since which a fee of Re. 1 for each entry is being charged, it was stated that the competition was "a novel literary pastime", that it was a contest of skill, that it was open to all readers and that Rs. 5000 "must be won". On the right hand side in the announcement it was stated that the competition was purely a game of skill, in which there were no alternatives and that every clue permitted of only a one word solution. It was mentioned that there were two types of clues ;

(1) The regular type, the solutions of which were to be found either in the Concise Oxford Dictionary or Chambers Twentieth Century Dictionary.

(2) Quotation clues printed in thicker type, the answers of which when filled in completed the square

It was then stated:

"These quotation clues are actual quotations from well known authors and they are sensible, witty and delightful and therefore they are in themselves truly educative and impart genuine knowledge to those who enter. Moreover there is no element of chance in this contest because there are no alternatives and there is no adjudication committee to decide the final solutions, since all the answers are part and parcel of the actual quotations found in the original works of authors.

How to solve: (a) Firstly solve all the ordinary type of clues printed in small type and enter them on the square. These fixed words provide the framework for the contest, (b) Secondly, tackle the quotation clues printed in thicker type by using your ingenuity and skill in an endeavour to recollect or discover the same word as used by the author in the complete quotation."

A variation was introduced from Quotes No. 18. Since then a list of words, including the missing words, is given in each competition under the heading " all

the correct answers to the quotation clues are to be found among the words given below in alphabetical order". There was a note at the top of Quotes No. 16, which was as follows: "spot the correct word of each quotation clue from among the words listed on the right." There was a further variation in Quotes No. 26. In this a note was added as follows;

"The quotation clues are selected so that as far as possible in each one of them there is some suggestion to help solvers find the right words. Use your skill to spot the correct word or each quotation clause from among the words listed on the right."

Similar notes appear in the subsequent competitions. In quotes Nos. 31 to 35 the words "Easier than ever to win" were mentioned below "Rs. 10,000 must be won". In quotes Nos. 36 and 58 the competitions contained the words "Rs. 15,000 must be won" and "You can do it". The words "You can do it" were replaced by the words "Easier than ever to win" in Quotes No. 37 and in subsequent competitions.

4. On 3rd May 1957 the compiler of the Quotes competition, witness Rao, wrote to the Collector of Bombay and inquired whether a license under the Prize Competitions Act, 1955, was necessary to conduct the Quotes competition. On 18th May 1957 the Collector sent a reply that no license is necessary for a competition, success in which depends to a substantial degree upon the exercise of skill. On 25th November 1957 the Petitioners addressed a further letter to the Collector, in which they stated that the Quotes was an intelligent competition, designed purely to cater for the tastes of discriminatory literary minded readers, that it had no mass appeal, that it could commend itself only to those who are well read and that the Petitioners proposed to offer a price of Rs. 5,000 in all future Quotes contests. It appears that the Collector did not give any reply to this letter. On 6th February 1960 the Collector asked the Petitioners to take out a license in respect of the Quotes competitions under the provisions of the Prize Competitions Act, 1955. On 13th February 1960 the Petitioners wrote to the Collector that the Quotes contests were essentially contests of skill and that consequently they did not come within the purview of the Prize Competitions Act, 1955. There was some further correspondence between the petitioners and the Collector. On 13th April 1960 the Collector informed the Petitioners that if they did not take out a license, they would render themselves liable to action under the Act. On 26th April 1960 the Petitioners filed the Petition, which has given rise to this appeal. In para 4 of the Petition it is stated that the Quotes competition is conducted as "an essentially literary pastime", that

"It is a contest of skill, in which actual quotations from well known authors are reproduced and the readers of the Illustrated weekly to India are asked to supply the appropriate words as used by the authors in their books",

and that

"it is in the nature of what is generally known as reference to context-

In para 6 the Petitioners stated that ".Unlike puzzles where two alternative words may be apt", "There is only one correct answer or solution of each quotation clue, namely, the word used by the author in his original work" and that "what the competitors are asked to fill in the blank is the appropriate word in each quotation clue by trying to recollect or spot the passage in which the quotation occurs."

In para 7 the Petitioners stated that the competition was being

"conducted as a pastime for the benefit of persons having knowledge of the English Language and literature and to foster and promote the knowledge to English Literature among the public at large"

and that

"the Competition never was and is not a game of chance or lottery, as success therein depends entirely upon a substantial degree of skill on the part of the competitors,"

In para 12 it is stated that the competition

"is essentially a literary pastime for the competitors as it is dependent upon (1) the application of the knowledge of the English Language and literature, and (2) reference to authors and their works".

The Petitioners therefore prayed that the Respondents to the Petition, the State of Bombay and the Collector of Bombay who are the appellants before us, should be directed to "forbear from enforcing or taking any steps in enforcement, implementation, furtherance or in pursuance of any of the provisions of the Prize Competitions Act, 1955, and the rules made thereunder", against the Petitioners and to allow the Petitioners to carry on the Quotes competition, without the Petitioners obtaining a license under the said Act.

5. On behalf of the appellants Mr. V. N. Kalghatgi, Assistant Secretary to the Government of Maharashtra, Home Department, filed an affidavit in reply to the Petition. He denied that the quotes competition is a contest of skill or that success in it depends on substantial degree of skill. He stated that the quotations contained in the competitions are not limited to well known quotations from famous authors or to quotations which by themselves are famous," but that they "extend to quotations in the sense of words quoted from a writer and thus include anything at any time written and printed in English by any person". He also stated that the quotations actually given "are on the whole obscure and insignificant and in several cases from writers who are not well known". He contended that it is consequently "an impossible task" to spot a quotation "for no human being however literate can have read even once an insignificant fraction of all the printed matter in the English Language. " He further stated that a glance at the alternative WORDS given in respect of each clue would enable "any person without any knowledge of English Literature, but having an understanding

of English words", to "put one of the two alternatives in the hope that it may be the correct one" and that "in respect of each clue there is a 50 per cent chance of a particular word being correct, though this chance becomes relatively insignificant when it is taken in relation to 13 clues".

He pointed out that the number of entries is not limited and stated that consequently

"a person can produce an all correct solution by working on the principle of permutation and combination without any knowledge of literature or of the writings of the authors from whom the quotations are alleged to be taken."

He therefore contended that the whole competition was

"designed to promote gambling by inviting competitors to have a shot at a hidden target, after they had been told that the correct target is to be found within the alternative words supplied,"

and that

"the competition was and is a game of chance or lottery, as success in it does not depend upon a substantial degree of skill on the part of the competitor."

6. On behalf of the petitioners Mr. Rao filed an affidavit in rejoinder. In that affidavit he reaffirmed that the Quotes contest was

"a literary contest of skill meant to enliven and sustain the interest of .readers of the Illustrated Weekly of India and also to provide them with an intellectual amusement and a pleasant pastime."

He stated that; the quotations in the "competition consist of saying which deserve to be preserved and to be rescued from obscurity" and that they "are sentences which are likely to be remembered or appreciated while reading a particular book." He annexed to this affidavit a statement containing "passages from works and books of authors from which the quotations have been reproduced ii" Quotes Nos. 35, 36, 37 and 41 ""and which according to him" show that the sentences reproduced are an integral part of the theme of the work and/or book and/or paragraph." He also stated that the quotations are from the works of well known authors whose books have been printed in the "pocket book Series". He denied that the Quotes competitions are a form of gambling or that they directly or otherwise fall within the scope of the Prize Competitions Act, 1955.

7. Although the contentions of the parties raised disputed questions of fact, the learned Judge, before whom the petition came up for hearing, recorded oral and documentary evidence because he was informed by counsel on both sides that this was being regarded as a test case. Two witnesses were examined on behalf of the Petitioners, Mr. Rao, who is the compiler of the Quotes competitions, and" Prof. Kulkarni, who is a frequent competitor in these-competitions. No oral evidence was led on behalf of the appellants.

8. Mr. Rao in his evidence gave details of the Quotes competition, how he compiles it and how it differs from the Commonsense Crossword puzzle which was being previously conducted and which was held to be a competition of a gambling character. He deposed that on Saturday afternoons and Sundays he goes to about half a dozen book stalls and buys not more than two books from each book stall. Before purchasing the books he looks at the various books exhibited in a book stall and reads a few pages from each book in order to ascertain whether any quotable clues are likely to be available from that book. He also considers whether the author of the book is well known and whether the publishers are also well known. In deciding whether an author is well known, he takes into consideration* the number of editions published of a particular book. He regards a book as a popular book if more than 50,000 copies of it have been published. Where necessary he refers to the index of authors which is in the library of the Times of India. He also refers to other libraries. He was at first using a few standard works like the Oxford Dictionary of Quotations, Stevenson's book of Quotations, Benham's Quotations and standard editions of proverbs and idioms. When the readers came to know this, the number of all correct entries rose rapidly. From Quotes No. 24 he therefore started using popular editions of standard works such as the books printed in the Penguin Series, the Pocket Book Series, etc. The number of all correct entries then came down considerably. Sometimes he takes quotations of writers, who wrote in languages other than English, but in those cases the quotations are taken from the English translations of their works. In order to pick out a quotation for the Quotes competition he carefully reads either the whole book or a number of pages from a book and selects sentence which might provide some material for thought to the person-trying to solve the clue. He jots down a quotation and then creates a fill in word for a particular word in that sentence. The fill in word has one letter different from the word in the quotation. He selects 13 clues of this type and then builds up a crossword square from these clues. He sees to it that the first quotation in the competition is more eye catching than the rest. In selecting the fill-in word, that is, the alternative word, he sees to it that the fill in word reads smoothly with the rest of the sentence and has only one letter different from the word actually used by the author. He never publishes a word with a missing letter from which at least two sensible words cannot be made, because if only one word could be had by supplying the missing letter, it would be a "fixed" word and not a clue. The criteria, which he uses for selecting quotations are sensibility, wit and humour, trite expressions, pithy sayings, proverbs and some well-known quotations. By sensibility he means that each quotation should be a complete sentence and should be sensible as a whole. He never takes half sentences. If the sentence picked as a quotation is very short, he includes another sentence in the quotation in order to supply the necessary context which would enable a person to identify the quotation.

9. Mr. Rao stated that "there is only one word which fits in with each clue, but two alternative words are suggested from which one is to be chosen by the

reader." A competitor is expected to study each clue and the alternative words from which the choice is to be made and "apply his memory or knowledge for making the correct choice". He also stated that on a few occasions he had included in the list of words more than two alternatives for a particular blank. This was done because there was an increase in the number of all-correct solutions.

10. Mr. Rao further stated that in each quotation selected by him there is some suggestion to help the readers in solving the puzzle. The suggestion in the quotation would stimulate their memory about the book from which the quotation had been taken or if they had not read it, it enabled them to reason out the appropriate word. He gave the formula for arriving at the number of combinations where there are pairs of alternatives. This is to raise 2 to the number of pairs, that is to say, if there are 13 pairs each consisting of two alternatives the number of combinations would be 2 raised to 13 (2^{13}), i.e. 8192. If therefore a competitor were to rely on chance alone, his chance to winning would be one in 8192, when there are 13 quotations.

11. Mr. Rao produced two lists giving the names of books and their authors, from which quotations had been taken for Quotes Nos. 1 to 57. The number of books used is 260 and the number of authors is 294. He stated that when the solution of a Quotes competition is published, the names to authors from whose works the quotations were selected are also published. The names of the particular books are not published because if that was done it would be easy for readers to identify quotations in subsequent competitions. Mr. Rao also produced a statement showing the total receipts from entry fees and the prizes offered from time to time. He stated that the Company made no profit from this competition, but he admitted that as a result of this competition the readership of the Illustrated Weekly of India increased by about 10,000.

12. Mr. Rao further stated that the entrants in the quotes competition have a much better educational background than the entrants for the Common-sense Crossword Puzzle and that many competitors are regular entrants in the sense that they submit entries in successive competitions. He also stated that some competitors have won prizes frequently and that this was an indication that the competition was one of skill.

13. Mr. Rao admitted that quotations are taken from any branch of literature, such as fiction, art, poetry, drama, history, general science, sports, etc., provided that the work is by a well-known author. On one or two occasions he had taken quotations from magazines. On two or three occasions he had taken quotations from Fowler's "Modern English Usage and Kings' English". He also admitted that many quotations were not worth preserving. He stated that quotations in Quotes Nos. 26, 31 and 32 were more representative of the types of quotations generally selected for the quotes competitions.

14. The other witness, Prof. Kulkarni, is a M. A. in Philosophy of the Bombay

University and is serving as a Professor of Philosophy in the Somaya College, Bombay. He obtained first class in his B. A. examination and in his M. A. examination he was awarded the Chancellor's Gold Medal. He has stated that next to Philosophy he is interested in English Literature, particularly poetry and fiction and that he reads fairly widely, but not systematically. He has been submitting entries for the quotes competitions fairly regularly from Quotes Nos. 18, 19 or 20. He won prizes for all-correct solutions on four occasions, (Quotes Nos. 21, 22, 23 and 54), for one error solution on three occasions, for two error solution on four occasions and once for a three error solution. He did not win any prizes in Quotes Nos. 24, 26 and 57 in regard to which he was cross-examined. He has stated that he is usually able to identify from memory two to eight quotations from one competition as being of certain authors, though sometimes he is not able to identify a single quotation to start with. He also verifies quotations from the books. When he "is unable to spot a particular quotation", he tries

""to reason out the appropriate word from out of the two alternatives listed in the Quotes". In reasoning out the appropriate word, he considers style, grammar, idiom, etc. and tries "to fit the word by trying to reconstruct the context in which the sentence might have been used".

If in respect of one or two clues he is "left with two alternative words either of which might be appropriate and if he is reasonably certain that the rest of his solution is correct, he submits alternative entries, but never more than four. He sends entries in the name of his son, because he and his wife think it auspicious to do so. When he sends more than one entry, he sends one entry in his wife's name, one in his brother's name and one in his own name. On one or two occasions when the alternative words, from which he had to make choice, were large in number, he did not send any entries. He denied that the spotting of the quotations was an impossible task. In the names of the authors published from time to time he found about 10 to 12 famous authors. On one or two occasions he found that an author who was unknown to him was a classic author. After Quotes No. 24 or 25, a relatively larger number of quotations were from American authors with whom he was not familiar. He, therefore, won comparatively fewer prizes. According to his experience, the majority of the quotations were not obscure or insignificant, but some of them were insignificant. He also found that some writers recurred frequently in the choice of quotations. He was cross-examined with reference to quotations included in Quotes Nos. 24 and 26, after these had been shown to him. In respect of quotes-No. 24 he was able to identify three quotations as being of certain authors. He was also able to remember five words correctly, but he was wrong in regard to two. In reasoning out the correct words, he was right with regard to two words and wrong, with regard to five. In regard to quotes No. 26 he was able to identify seven quotations as being of certain authors. He was able to remember correctly eight words. In reasoning out the correct words, he was right in regard to two words and wrong in regard to one. He was also cross-examined with

regard to all quotations in Quotes No. 57 without this being shown to him. He was given slips of paper on which the quotations with the two alternative words had been reproduced. He was able to identify only one author and he remembered correctly one word. He was asked to reason out the correct words in respect of 11 quotations and his answers were all correct.

15. The learned Judge came to the conclusion that the Quotes competition is one in which

"a person of wide reading, retentive memory and good reasoning faculty should be able to exercise skill in at least eight and probably ten of the thirteen clues",

that

"by and large, the contest is confined in practice to those who possess, or who believe they possess the said types of skill in various degrees"

and that

""although an element of chance enters in the determination of success, the persons who possess the particular types of skill in higher measure have a relatively better prospect of winning the contest."

Accordingly he held that the quotes competition is one in which success depends to a substantial degree upon exercise of skill and that consequently the Prize Competitions Act, 1955, does not apply to it. He, therefore, made the rule absolute. He, however, stated in his order that the order made by him would not be operative if the nature of the competition was altered so as to water down the element of skill involved therein, The order made by him is being challenged in this appeal.

16. In 1948 the Bombay Lotteries and Prize -Competitions Control and Tax Act 1948 came into -force. Section 2(1)(d) of this Act defines "prize -competition" as including-

(i) (1) crossword prize competition,

(2) missing word prize competition,

(3) picture prize competition,

(4) number prize competition, or

(5) any other prize competition, for which the solution is or is not prepared beforehand by the promoters or for which the solution is determined by lot or chance;

(ii) any competition in which prizes are offered for forecasts of the results either of a future event or of a past event the result of which is not yet ascertained or not yet generally known; and

(iii) any other competition success in which does not depend to a substantial

degree upon the exercise of skill.

In 1955 Parliament enacted the Prize Competitions Act 1955, hereinafter referred to as the Act. In this Act "prize competition" is defined as follows:

"Prize competition means any competition (whether called crossword prize competition, a missing word prize competition, a picture prize competition or by any other name) in which prizes are offered for the solution of any puzzle based upon the building up, arrangement, combination or permutation of letters, words, or figures."

The constitutional validity of both these Acts was challenged before the Supreme Court in *The State of Bombay Vs. R.M.D. Chamarbaugwala*, and *R.M.D. Chamarbaugwala Vs. The Union of India (UOI)*, . The Supreme Court held that both these Acts were valid and that competitions sought to be controlled and regulated by both the Acts are only those competitions in which success does not depend to a substantial degree upon the exercise of skill. Mr. Palkhivala has urged, and we accept his argument, that the words "success in which does not depend to a substantial degree upon the exercise of skill" must therefore be read in the definition of "prize competition" given in the Act. For the purposes of the Act, competitions have therefore to be divided into two classes, those in which success depends to a substantial extent on skill and those in which it does not so depend. In the words of Venkatarama Aiyar J. in 59 Bom LR 973 at p. 984 :

(*R.M.D. Chamarbaugwala Vs. The Union of India (UOI)*, , the two form two distinct and separate categories and the difference between them is as clear cut as that between commercial and wagering contracts. On the facts, there might be difficulty in deciding whether a given competition falls within one category or not; but when the true character is determined, it must fall either under the one or the other.

17. In order to decide whether the Act applies to a competition, two things are therefore to be considered : (1) whether it involves the exercise of skill, and (2) whether success in it depends to a substantial degree upon the exercise of skill. Mere use of skill is therefore not sufficient to take a competition out of the scope of the Act. It must also be shown that success in it depends substantially upon the use of skill. At the same time a competition will not cease to be a competition involving skill, merely because success in it may also be obtained by chance or, as was aptly stated by Mr. Palkhivala, because chance has also a chance of success. It may also be noted that what is to be considered is not whether the competition involves substantial skill, but whether success in it is substantially due to skill,

18. I will now refer to the cases which were cited at the Bar. In *Barclay v. Bearson* (1893) 2 Ch 154, the defendant, who was the proprietor of a newspaper, published in his paper a paragraph omitting the last word. In the same paper he printed a coupon with a direction that persons wishing to enter the competition must cut out the coupon and fill in the word missing from the paragraph. It was

further stated that the missing word was in the hands of a chartered accountant, enclosed in a sealed envelope and that the whole of the money received in entrance fees would be divided equally amongst those competitions who filled in the missing word correctly. It was found that there were several words which could more or less appropriately fill the gap in the paragraph, that the word to which success attached, or as it was called, the "correct word" might not be the most appropriate to fill the gap and that no clue had been given to the mode in which, among the many words more or less appropriate, the correct word had actually been chosen. Sterling J., who decided the case, agreed with and regarded himself as bound by the following expression of opinion by Hawkins J. in *Taylor v. Smetten* (1883) 11 Q B D 207 :

"In Webster's dictionary a lottery is defined to be a distribution of prizes by lot or chance and a similar definition is given in Johnson; such definitions are in our opinion correct, and in such sense we think the word is used in the statute."

As the defendants had not called for the selection of the most fitting word with which to complete the sentence, the learned Judge was of the opinion that the selection of the correct word was entirely a matter of chance. In his opinion the use of a physical lot is form, not substance and the arbitrary and unfettered choice of the editor of the newspaper stood on the same footing. He therefore held that the competition constituted a lottery and was illegal. This case therefore lays down that, where a competition involves the selection of a word of two or more equally fitting words, the choice of the correct word is entirely a matter of chance and the competition is consequently a lottery.

19. In *Hall v. Cox*. (1899) 1 Q B 198, the defendant published a newspaper containing an offer of a money prize for a correct prediction of the number of births and deaths in London during a named week. It was held that there was an element of skill in the competition, as the result depended to a certain extent on the investigation of the returns for previous years and the consideration of the increase of population the death rate, and such like matters, that the result therefore depended largely on chance, but not entirely, and that consequently the competition was not a lottery. According to this decision, therefore, to constitute a lottery it must be a matter depending entirely upon chance.

20. In *Blyth v. Hulton & Co. Ltd.* (1908) 24 T. L. R 719, the competition consisted in filling in on a coupon the last line of an unfinished limerick and a prize was offered for the line which was found to be the best. It was announced that every coupon would be examined by a competent staff and would be judged entirely on its merits, and that the editor's decision would be final. Lord Justice Vaughan-Williams pointed out in his judgment that it must have been anticipated that there would be a very large number of competitors, that therefore it was impossible to make a selection of the best line according to any real comparison of the lines one with another, as such an operation if really carried out would have occupied months and not merely a few days, which were in fact allowed, that the announcement that the decision would be by merit was really

colourable, that it was obvious that in the circumstances it would not be carried out, that the winner would therefore be selected not according to merit "but according to fancy or to some temporary rule which the editor might choose to adopt and that on the face of the scheme the decision must be governed by chance. The competition was therefore held to be a lottery. The principle of this decision is that even if the words in the announcement are carefully chosen to make the competition loon like a trial of skill, in which there would be a decision on the merits of the work of each person entering into the competition, and even if skill can contribute to the result, if in fact it does not do so, the scheme is a lottery, as the winning of the prize depends on chance,

21. In *Scott v. Director of Public Prosecutions* (1914) 2 KB 888, the decision in (1899) 1 Q B 198 was followed. In that case the proprietors of a newspaper published therein an advertisement of a competition for money prizes the terms of which were that each competitor was to select one of a number of given words and compose a short sentence which defined or illustrated the word selected, the initial letter of each word in the sentence to be a letter occurring in the selected word, that all those sentences reaching the editor of the newspaper would receive careful consideration and that the decision of the editor as to the prize winners would be final. It was held that the competition was one involving some degree of skill on the part of the competitors, that as there was no evidence that the number of competitors was so large as to make it impossible for the sentences to be considered on their merits, the competition was not one, the result of which depended entirely on chance and that it was therefore not a lottery. Lush J. in his judgment referred to 1899 1QB 198 and observed :

"The word lottery indicates clearly enough what is the offence aimed at by the statute, and the Act has been interpreted in accordance with the obvious meaning of the term as applying only to distribution of money by chance, and nothing but chance, that is, by doing that which is equivalent to drawing lots. If merits or skill plays any part in determining the distribution, there has been no lottery and there is no offence."

At page 875 he stated that the scheme would be a lottery, although on the face of it appeared not to be or if the appeal to skill and merit was a mere blind or cloak to cover up the true nature of the scheme. At pp. 876 and 877 the learned Judge stated that

"the absence or presence of a "standard" could not convert an adjudication into a lottery or not a lottery according as the merit was of a low or a high . order."

In his view a decision

"according to honest taste or fancy is not a decision by chance and nothing else, however justly one may belittle the class or degree of merit."

Atkin J. in his judgment pointed out that not only literary skill, but any kind of skill or dexterity, whether bodily or mental, in which persons can compete, would

prevent a scheme from being a lottery, if the result depended partly upon such skill or dexterity-In this case, therefore, it was again laid down that a compensation is not a lottery, if merit or skill plays any part in it.

22. In *Hobbs v. Ward*. (1929) 45 T L R 373, the competitors were asked to place 13 named articles in the order of their popularity as shown by the actual voting of the entrants themselves. Lord Hewart C. J. accepted as the proper test that laid down in 1899 1 Q B 198 and held that since the competitors were not asked to Judge the real merits of the articles, but to guess how other people would guess at their popularity, the result depended entirely on chance and the competition was a lottery.

23. In 1934 the Betting and Lotteries Act 1934 came into force. Section 22, Sub-section (1) makes it an offence to print, publish or distribute any advertisement of a lottery and also makes punishable certain other acts done in connection with lotteries. Section 26, sub-section (1) is in the following terms;

"It shall be unlawful to conduct in or through a newspaper, or in connection with any trade or business or the sale of any article to the public.

(a) any competition in which prizes are offered for forecasts either of the result of a future event, or of a past event the result of which is not yet ascertained or not yet generally known:

(b) any other competition success in which does not depend to a substantial degree upon the exercise of skill".

The Act does not define lottery and the words "success in which does not depend to a substantial degree upon the exercise of skill" are used in S. 26 but not in Section 22 of the Act.

24. In *Coles v. Odhams Press Ltd*. (1936) 1KB 416, a newspaper published an advertisement of a crossword puzzle competition with a money prize. The puzzle was so constructed that in a number of instances a clue would be satisfied by only one word having no alternative, while in other instances the clue suggested two or more alternative words which might not all be equally appropriate. The competition editor had prepared beforehand a test solution of the puzzle, and the prize was to be awarded to the competitor whose solution happened to correspond most closely to that of the competition editor, although, if all the solutions sent in were examined and compared on their merits, the solution of that competitor might not be found to be intrinsically the best. Four summonses were taken out against the proprietors and the publisher of the newspaper. The first two summonses charged that the defendants in publishing the advertisement of a crossword competition published an advertisement of a lottery contrary to Section 22, sub-section (1) (C) of the Betting and Lotteries Act 1934, and the other two summonses charged that the defendants in publishing that advertisement conducted a competition in which success did not depend on skill, contrary to Section 26, Sub-section (1) (b) of that Act. The

defendants" counsel conceded in his arguments that if they were liable under the first two summonses, they could not escape liability under the other two summonses. Lord Hewart C. J, in his judgment distinguished (1914) 2 K B 868, and observed (p. 426

"A lottery is a distribution of prizes by lot or chance The solution which is to be adjudged to be correct is not to be picked out of the efforts of the competitors in competition with each other. It is to be the solution that is found, on examination, to coincide most nearly with a set of words chosen beforehand by somebody not known by a method, if any, not stated, that person being perfectly at liberty to act in an arbitrary, capricious, or even mischievous spirit. In other words, the competitors are invited to pay a certain number of pence to have the opportunity of taking blind shots at a hidden target."

In his opinion, therefore, the advertisement was upon the face of it an advertisement of a lottery. Humphreys J., in his judgment referred to the fact that/as soon as a particular scheme is declared by a decision of a Court to be a lottery, the skill and ingenuity of a number of extremely able persons is exercised in trying to discover some means of avoiding the effect of that decision. He observed that if with the knowledge gained from cases which had been decided since 1914 2 K B 868, the learned Judges who had decided that case were able to deal with the matter again, they might come to a different conclusion He went on to add that the arguments of the defendants" counsel would have been right if the competition editor had found the only possible correct solution of the crossword puzzle which was to be obtained from the clues furnished. At page 429 he stated :

"when there are alternative solutions of such a puzzle as this, the difficulty arises that the competitor, who is the person to be considered, is invited to decide which of two or more alternative solutions will be selected by some person whom he does not know, and by some method which is not indicated. In my view, an invitation to enter such a competition is on the face of it an invitation to take part in a lottery".

The ratio of this decision is that where there is no Judgment on the efforts of the competitors, but where the solution is determined beforehand and is not the only correct solution of the puzzle, the result depends on chance and the scheme is consequently a lottery.

25. Witty v. World Service, Ltd. (1936) 1 Ch 303 was a case u/s 26 (1) (b) of the Betting and Lotteries Act, 1934. In that case a competition was advertised in a newspaper in which a money prize was offered to the reader sending in the best solution of a picture puzzle illustrated in the same issue. It was held that success in the competition depended upon the exercise of a substantial degree of skill, there being no pre-determined solution of the puzzle. It may be pointed out that in this competition every attempt was individually scrutinised and a selection made of the most fitting answers to the puzzle. Success therefore depended on

skill or merit and not on chance.

26. In *Moore v. Elphick* (1945) 2 All E R 155, the appellant formed a club for the purpose of helping members to participate in football pools conducted by various organisations. For a certain weekly charge he made entries on their behalf in a football pool selected by him. He carefully studied the results of football matches for a number of years and selected out of a total of twelve matches played in a week four teams which he considered to be likely winners. For the remaining eight teams he made varying entries, worked out on a mathematical basis of permutation and combination. It was held that as the appellant "used his skill in choosing the pool for the members of the club to enter, the matches for the four contestants and the manner in which the remaining eight forecasts should be made") the business carried on by him was not a lottery. At p. 156 Humphreys J. referred to the definition of "lottery" given by Lush J. in 1914 2 K B 868, as "distribution of money by chance and nothing but chance" and observed :

"To that definition, I think, should be added that the merit or skill must be real skill which has, some effect. It must be something more than a scintilla of skill, so that it can fairly be said that the distribution of the prize, the allocation of the prize, in the particular case was due to two causes, not one cause with possibly a scintilla of some other cause added to it, but two separate causes, one being; skill and the other being chance."

At p. 101 the learned Judge referred to a passage from the judgment of Lord Justice Clerk (Lord Aitchinson) in a Scottish case, *Strang v. Adair* 1956 S C 56, in which the learned Lord justice had after referring to the dictum in 1899 1 Q B 198 "that to constitute a lottery it must be a matter depending entirely upon chance" stated :

"I do not, however, read this dictum as meaning that the fact of skill or knowledge in the initial stages of a competition will necessarily exclude the competition from being a lottery, it in the progress-of the competition the element of chance becomes so-predominant that in a practical sense any initial skill or knowledge ceases to be operative and becomes of no effect in determining the result-"

In his judgment Humphreys J. also stated that it is not sufficient for a person charged to show that on the face of it his scheme is a legal scheme and that the Court would go deeper than that into the real scheme as it emerges from a close examination because the Court deals with realities and not with the mere appearance. At p, 159 the learned Judge observed :

"..... He (counsel for the respondent) says it is-obvious that as to eight out of twelve matches this is pure chance. Be it so. Supposing that as to two-thirds of the matches it is chance, but as to one-third it is skill, is that a lottery ? The answer must be "No", if one pays attention to the definition of Lush J. of a lottery. It is clearly not. One-third is a very substantial portion of the whole, and

it is found to be true that if every competitor has had one-third, of his selections made for him as a result of skill, ,it cannot be said that the whole thing is the result of chance or substantially nothing but chance, and upon that point counsel for the respondent fails to-satisfy me so far that this was a lottery."

The learned Judge went on to add :

"This is not a case in which I pretend that I hold a very strong and clear opinion. and I remind myself that I am dealing with a criminal case, and I do not think the Courts are, or should be, astute to make a man criminal unless the facts are clear I can only say that in my opinion it is not clear that this scheme was a lottery."

These observations must be borne in mind in considering the earlier observations in regard to there being a substantial element of skill. He appears to have used the word "substantial" in the sense of its being "something more than a scintilla". It may also be noted that this was a case u/s 22 (1) (f) of the Betting and Lotteries Act, which makes it an offence to use any premises or permit any premises-to be used for purposes connected with the promotion or conduct of a lottery. This section does not contain the words "success in which does not depend to a substantial degree upon the exercise of skill" used in Section 26(1) (b)of the Act.

27. The other Judge Cassels J. agreed with Humphreys J. and observed :

"A scheme must be looked at as a whole. If chance predominates and is the one outstanding; feature, then it comes within the definition of a lottery as laid down by the cases."

According to Halsbury this observation appears to go further than the test laid down in the other decisions (footnote at p. 240, Vol. 18, Third Edition).

28. In *Boucher v. Rowsell* (1947) 1All E R 870, the appellant invited people, who had to pay an entrance fee for so doing, to forecast which of any combinations of three football teams would score the highest number of goals in a week as compared with any other combination of three that might be selected. It was held that the scheme was a lottery and that the appellant had been rightly convicted of selling chances in a lottery and of using premises for purposes connected with the promotion of the lottery, contrary to Section 22 (1) (b) and (1) (i) of the Betting and Lotteries Act, 1934. Atkinson J. in his judgment distinguished (1945) 2 All E R 155 on the ground that the prize distributed there depended in part on skill and a great part on chance, and the distribution did not depend solely on chance.

29. The learned Advocate-General contended that the observations of Humphreys J. in 1945 2 All E R 155 that in order that a scheme may not be a lottery the merit or skill must be real skill which has some effect, do not change the previous English law, according to which a contest is not a lottery unless the result depends entirely upon chance- He referred us to the definition of "Lottery"

given in Halsbury Vol. 18, p. 239, 1957, Edition, as a scheme for distribution prizes by lot or chance. He also pointed out that this definition of "lottery" has been referred to in the judgments of Atkinson J. and Oliver J. in (1947) 1 All E B 870. He therefore urged that the observation made by Chagla C. J. in State of Bombay Vs. R.M.D. Chamarbaugwalia and Others, that the definition given by Halsbury requires perhaps a slight alteration or amendment in view of later English authorities, is not correct. We do not think that it is necessary for us to decide in this appeal whether the above observations of Humphreys J. do or do not make any change in the previous English law, according to which a competition was a lottery if its result depended entirely upon chance.

30. The propositions, which emerge from the above English decisions, are : (1) A scheme must be looked at as a whole and must not be judged by what appears on the face of it. The Court must go deeper and ascertain its true nature and also consider the manner in which it is conducted. (2) If notwithstanding what is stated in the announcement, it is found that there is no real trial of skill or that skill does not intact contribute to the result, the scheme will be held to be a lottery. (3) The competitor is the person to be considered and it is the exercise of skill by him that is to be taken into consideration. (4) The skill need not be literary skill but may be of any kind and it is immaterial whether the skill required is of a low or high order. (5) If a choice is" to be made between two or more words, any of which may be equally appropriate, the selection of the word to which success attaches is entirely a matter of chance.

31. The learned Advocate General also referred us to the decision of the Missouri Supreme Court in State of Missouri Ex. Inf. Roy Mc Kitrick. Attorney-general v. Globe Democrat Publishing Co. 113 A L R 1104, in which it was held that to constitute a lottery it is not necessary that the result should depend entirely on chance, but it is sufficient if chance is the dominant factor and that hence a contest may be lottery even though skill judgment or research enter there into in some degree if chance in a larger degree determines the result. This statement of law is also to be found in American Jurisprudence, Vol. 34, p. 649, where after mentioning that in England if merit of skill plays any part in the distribution of money or other property there is no lottery, it is stated :--

"In the United States, however, by what appears to be the weight of authority at the present day, it is not necessary that this element of chance be pure chance, but it may be accompanied by an element of calculation or even of certainty ; it is sufficient if chance is the dominant or controlling factor. However, the rule that chance must be the dominant factor is to be taken in the qualitative or causative sense, rather than the quantitative sense."

At page 655 it is stated :

"But from an examination of the later cases, both Federal and state, it appears to have been the established American doctrine that in order to constitute a lottery within the meaning of the various statutes, it is not necessary for the distribution

of prizes to be purely by chance, as the dominating element, even though affected to some extent by the exercise of skill or judgment."

See also *Corpus Juris Secundum*, Vol. 54, where at page 847 it is stated :

"Where elements both of skill and of chance enter into a contest, the determination of its character as a lottery or not is generally held to depend on which is the dominating element."

32. The other two cases, to which it is necessary to refer are *Sir Kasturchand Ltd. Vs. Commissioner of Income Tax*, and *The State of Bombay Vs. R.M.D. Chamarbaugwala*, . In both these cases the commonsense crossword competition formerly conducted by the petitioners was held to be a competition of a gambling character. Chagla C. J. in his judgment at p. 329 (of Bom L R); (at p. 10 of A I R) pointed out that the two clues furnished to the competitors were in most cases equally apt and equally appropriate. However, impressive the reasoning might be of the adjudication committee in coming to a particular solution, equally impressive reasoning could have been put forward for arriving at the alternative solution, that therefore what the competitor did was to take his chance that the solution which he mentioned in the entry submitted by him was the solution which would confirm to the decision given by the adjudication committee and that what he did therefore was to take a blind shot at a hidden target, the target being the word chosen by the adjudication committee. In his opinion, therefore, the skill displayed by the competitor did not in any way contribute to the result, which was the awarding of the prize. The Supreme Court agreed with the view of the High Court that the competition was a lottery.

33. Success in a competition can be said to depend upon skill if the competitor who uses skill has a much better chance of winning the prize than the one who does not use skill or uses it to a lesser degree, see *State of Bombay Vs. R.M.D. Chamarbaugwalia and Others*, . This test must, however, be applied by reference to the class of competitors, who are invited and who are likely to take part in the contest in response to the advertisement thereof. With the Act on the Statute book it is hardly likely that any competition would be started, which does not involve skill of some particular kind. Some competitors may have that skill, while others may not. These who possess the skill may have it in varying degrees. In actual fact there are not likely to be clear cut categories of competitors. But if the skill required is such as is not likely to be possessed by the great majority of competitors, most of the competitors will join the competition not because they possess the skill or want to put it to test, but because they desire to gamble and try their luck at winning the prize. They will rely not on skill but on luck in the attempt to secure the prize. For most of the competitors the result will therefore depend on chance and the invitation to them to participate in the competition cannot be treated as an invitation to join in a contest of skill. In such a case it will be difficult to hold that success depends upon the use of skill. The test must, therefore be whether for the great majority of competitors success in the competition depends on skill to chance.

34. The Advocate-General contended, and for the reasons just stated we accept his argument that if a competition is open to all members of the public and the hope of success is held out to them by using captions such as, "You can do it :," "You can win," and "Easier than ever to win," the competition will be of a gambling character, if the public at large do not possess the requisite skill. In other words, the question whether skill or chance is the determining factor must be decided with reference to the capacity of the general public and not to that of exceptionally qualified men to solve the problem presented. In this connection the Advocate-General relied on the following passage in the judgment of the Supreme Court in *The State of Bombay Vs. R.M.D. Chamarbaugwala*, ;

"It is said that forecasts of such events as are specified in the section need not necessarily depend on chance, for it may be accurately done by the exercise of knowledge and skill derived from a close study of the statistics of similar events of the past. It may be that expert statisticians may form some idea of the result of an uncertain future event, but it is difficult to treat the invitation to the general public to participate in these competitions as an invitation to a game of skill. The ordinary common people who usually join in these competitions can hardly be credited with such abundance of statistical skill as will enable them, by the application of their skill, to attain success. For most, if not all, of them the forecast is nothing better than a shot at a hidden target."

Mr. Palkhivala contended that these remarks would apply if the contest requires specialised knowledge, i.e. if the solution can be found by only those who possess such knowledge. In such cases, so far as ordinary members of the public are concerned, success would depend almost entirely on chance. Assuming this argument to be correct, it necessarily follows that "if the general public is invited to join the contest, it is the knowledge and skill, which are possessed by an average member of the public that should be taken into consideration in deciding whether the result depends on chance or on the use of skill. This was so decided in 113 A L R 1104. In that case it was held that the question whether the element of chance is present so as to bring a puzzle contest within the lottery law must be determined with reference to the capacity of the general public to solve the problems presented, where the public are invited to participate by advertising that any one may win, that no special skill, training or education is required and that an opportunity is afforded to gain some easy money. With respect we agree with the view taken in this case.

35. The next question to be considered is what is the import of the word "substantial" in the expression "success in which does not depend to a substantial degree upon the exercise of skill" the word "substantial" is a word of no fixed meaning and is an unsatisfactory medium for carrying the idea of some ascertainable proportion of the whole, See Note (1) in Stroud's Judicial Dictionary, Vol. 4, p. 2901, 1953 edition. It is used in two different senses. For instance when one says that a witness' testimony is substantially true or that counsel's arguments are substantially correct, the word "substantial" is used in

the sense of preponderating or very nearly wholly. The other meaning of the word is "real, having substance, not illusory." Thus in Note (5) at p. 2902 in Stroud's Dictionary it is stated that out of a rent of ₹80 per annum, ₹13 were held to be a substantial amount. In Note (7) it is mentioned that one thousand firms out of 6,000 and 150,000 employees out of 474,000 employees were not regarded as insubstantial numbers. In regard to Note (5) Viscount Simon in *Falser v. Grinling*, 1948 A C 291 observed :

"It is plain that the phrase "substantial portion requires a comparison with the whole rent "Substantial" in this connection is not the same as "not unsubstantial", i.e. just enough to avoid the "de minimis" principle. One of the primary meanings of the word is equivalent to considerable solid or big- It is in this sense that we speak of a substantial fortune substantial meal, a substantial man, a substantial argument or ground of defence. Applying the word in this sense it must be left to the discretion of the judge of fact to decide as best he can according to the circumstances in each case, the onus being on the landlord. If the Judgment of the Court of Appeal in *Falser's* case 1948 A C 291 were to be understood as fixing percentages as a legal measure ; that would be going beyond the powers of the judiciary. To say that everything over 20 per cent of the whole rent should be regarded as a substantial portion of that rent would be to play the part of a legislator"

Mr. Palkhivala contended that the word, "substantial" should be construed here as meaning "not insignificant, something more than a scintilla". In support of his argument he relied on the observations, of Humphreys J. in 1945 2 All E R 155 that one-third is a very substantial portion of the whole. The question which arose for decision in that case was whether the scheme was a lottery. Humphreys J. considered this question in the light of his definition of lottery, according to which a scheme would be a lottery, even if it involved skill, if the skill involved if not more than a scintilla. As four out of 12 selections were made by the use of skill the skill involved was more than a scintilla. It was in this connection that Humphreys J. made the observations referred to above. The word "substantial" was therefore used -by Humphreys J. in contradiction to "scintilla." The Court in that case was not concerned with construing the words "success in which does not depend to a substantial degree," because there was no charge u/s 26 (1) (b) of the Act.

36. Mr. Palkhivala also placed considerable reliance on the following passage in *State of Bombay Vs. R.M.D. Chamarbaugwalia and Others*, ;

"Now, "Lottery" has been defined in Halsbury, Vol. XV, page 525. A lottery has been described as a scheme for distributing prizes by lot or chance, Therefore, if there is a scheme under which prizes are to be given and the winner of the prize does not get it by reason of skill exercised by him, but obtains it merely by chance or by the drawing of lots, then, that scheme would be a lottery as understood in English law and would constitute gambling. The definition given by Halsbury requires perhaps a slight alteration or amendment as the English

authorities themselves point out, with which we shall presently deal. It is not necessary to constitute a scheme a lottery that the prize should be distributed wholly by chance. In order to take the scheme out of the category of lottery, it is essential that there must be a substantial element of skill although that element may not be the preponderating element. If, as the authorities have pointed out, a mere scintilla of skill is displayed in order to enable the person competing for the prize to obtain the prize, then it would still be a lottery and would constitute gambling. As far as India is concerned, as we have pointed out, the only legislation with regard to lotteries was the one found in the Indian Penal Code."

Chagla C. J. had evidently in mind the definition of lottery given by Humphreys J. in 1945 2 All E R 155 and he was stating the position as it is in English law. This is clear from the words "As far as India is concerned," as well as from his earlier observations on the same page :

"We are really not strictly concerned whether it is a lottery in the strict sense of the term, nor are we concerned whether it is a lottery in the wider sense in which it has been decided by the English Courts. All that we are concerned with is whether it is gambling in the wide sense in which that expression is used in entry 34."

In America on the other hand, the mere fact that some skill is involved in a competition will not be sufficient to save it from being regarded as a lottery , if chance is the dominating factor in determining the result.

37. In India the question, which we have to decide in such cases, is not so much whether the competition is a lottery, hut whether it is a competition of a gambling character. Lottery is one kind of gambling which is a much wider term. The English doctrine of pure chance or of chance with a scintilla of skill applicable to lotteries cannot therefore be the test for determining whether a competition is of ambling character, that is, whether success in it does not depend to a substantial degree upon the exercise of skill. As pointed out by Viscount Simon in 1948 A C 291, it is difficult to de6ne the word "substantial" in terms of percentages. In our opinion, the question whether skill has affected the result to a substantial degree must be considered not only in a quantitative but also in a qualitative sense and must be decided in each case in the light of the facts and circumstances of that case. In each case the Court must find out the nature of the skill involved in the competition, the persons to whom the competition is open and who are likely to take part therein and the extent to which the competitors or the great majority of them possess or are likely to possess the particular type of skill and decide upon a consideration of these and other relevant facts and circumstances whether the result of the winning of the prize can be attributed substantially to exercise of skill.

38. Mr. Palkhivala contended that it is not necessary that the compiler or the promoter of the contest should know whether skill has actually been used by a competitor. Mr. Palkhivala is right on this point. What is material is whether the

exercise of skill by a competitor has improved the chances of his success in the competition.

39. It was also urged by Mr. Palkhiwala that a competition will not become a lottery, merely because permutations and combinations are possible or because a competitor is permitted to send more than one entry. This will depend upon the facts of each case. If the number of permutations and combinations, which have to be made to order to be able to win the prize, is such as to make the result dependent substantially on chance, the competition will be regarded as a lottery.

40. Mr. Palkhivala also contended that a competition does not cease to be a contest of skill merely because there are two or more alternatives, from which a choice has to be made. If the alternatives are such that any one of them may be equally appropriate, the case will fall within the ratio of 1893 2 Ch 154 and *The State of Bombay Vs. R.M.D. Chamarbaugwala*, and the competition will be a lottery. The position will, however, be different, if only one of the alternatives can provide the correct answer. If there is only one correct solution and if that solution can be arrived at by use of skill, the scheme will not be a lottery.

41. We will now proceed to deal with the facts of this case. Mr. Palkhivala argued that in judging this quotes competition we should consider its general nature and its basic features and ignore the somewhat exaggerated claims made, such as that the competition is conducted in order to promote knowledge of English literature or that the quotations are such as deserve to be rescued from oblivion. He pointed out that this is not a competition for selecting the-most appropriate word, but that it is a competition for spotting the word used by the author of the-quotation. In the announcement of each competition the competitor is asked to use his "skill to spot the correct word of each quotation clue." In quotes. No. 12 and some other competitions the reader is. asked to use "his ingenuity and skill in an endeavour to recollect or discover the same word as used by the-author in the complete quotation." In some competitions such as Quotes No. 36, the reader is informed that his knowledge and reasoning powers can hold him to win the handsome prize offered. In his evidence Rao has stated that a person who wishes to-submit an entry in a Quotes competition is expected, to study the clue with reference to the crossword" square and the alternative words from which the choice is to be made and apply his memory or knowledge for making the correct choice. Prof. Kulkarni has deposed that usually he is able to identify from-memory two to eight quotations in a competition as. being of certain authors and that when he is unable. to spot a particular quotation he tries to reason out the appropriate word out of the alternative words given in the competition. The method suggested for solving these competitions, therefore, is that the competitor should first use his memory and try and recollect the word used by the author. If he is not able to do so, he should use his reasoning powers and decide by the process of reasoning which out of the two words is the correct word.

42. Three kinds of cases are therefore likely to arise : (1) Where the reader

remembers the quotation and is able to recollect the missing word from, his memory. (2) where the reader has a partial or vague recollection and is able to find the correct word, by further study and reference to the original word and (3) where the reader has either not read the quotation or has read it but has forgotten it. A quotes, competition therefore involves two types of skill-

(1) Capacity to remember and recollect supplemented in some cases by further study and research, and

(2) ability to reason, which enables a competitor to-find the correct word by the process of reasoning.

43. With, regard to the first type of skill, it is necessary first to consider the field within which the compiler operates. Rao has stated that the quotations taken for the Quotes competitions are from any branch of literature, such as fiction, art, poetry drama, history, general science, sports, etc. provided that the particular work is by a well known author. By a well known author he means an author of a book, 50,000 copies of which have been published. Rao has also stated that he uses popular series of standard works, such as the books printed in the Penguin Series, the Pocket Book Series etc. These series contain books on all branches of knowledge. Works of American writers are also frequently used. Books in English are published all over the world. and even if the selection is restricted to works of well known authors (as defined by Rao) their number will-run into thousands. Three quotations are from magazines like John Bull, Readers Digest and Discovery, Quotations have also been taken from English translations of books written in languages other than.. English. Some Quotations are from English translations of foreign proverbs. Quotations have also been given from Fowler's Modern English Usage and King's English. The realm of literature and writings from which quotations may be selected, is therefore so vast that no one, not even an expert in one or more "branches to knowledge, would be able to remember them, except the quotations which are well known or which are otherwise famous.

44. Rao in his evidence produced the list of books, which he had used till then. This shows that till Quotes No. 57 he had used 260 books written by 294 authors. We were also told that over 90 per cent of quotations given in quotes Nos. 1 to 57 are from books on fiction, poetry and drama- Mr. Palkhivala contended that we should look at the manner in which the scheme is being implemented and what is actually being done and not what may be done hereafter. lie stated that the compiler Rao has put limitations on his choice. He confines himself to well known and popular authors and he selects only those "books of which 50,000 or more copies have been published. Also by and large he had taken quotations from works on fiction, art and drama. The selections are therefore confined to the range of popular literature. Mr. Palkhivala therefore argued that in actual practice Rao has considerably restricted the field of choice and that we should bear this in mind in coming to our conclusions. It is difficult to accept these arguments of Mr. Palkhiwala. It seems to us that we must Judge

the competition by what is permissible to the compiler to do according to the evidence led in this case. The prayers in the petition are not restricted to Quotes Nos. 1 to 57. They are in respect of all quotes competitions including those which may be announced hereafter. In this connection we may refer to Rao's evidence that every week he adds some new books to his list.

45. The list of books used in Quotes Nos. 1 to 57 and produced by Rao includes books on history of art, paintings, music, and sports. Even if the selections are made from works on fiction, poetry and drama, the number of books published in English in these subjects and particularly in fiction is extremely large. A very relevant factor in this connection is that fiction books are generally read for light entertainment and are forgotten soon thereafter. Stray sentences from such books are therefore not likely to be remembered.

46. In the affidavit in rejoinder it is stated that the quotations consist of sentences which deserve to be preserved and to be rescued from obscurity. Rao at first stated that about 75 per cent, of the quotations deserve to be preserved. He more or less gave up this case in his cross-examination. For instance he stated that only 5 out of 13 quotations given in Quotes No 32, which according to him is a representative competition, were worth preserving. It is true that what may convey no meaning to one person may have significance to another. Prof. Kulkarni has stated that sometimes he is able to spot the missing word even from a comparatively insignificant sentence from the author's works. Sometimes even insignificant words or sentences are used in such unusual sense or context that they will stick to the reader's memory and will always ring a bell whenever he reads them again. For instance, clue No. 5 across in quotes No. 57 is : "They have to feed the roses." The alternative words given are "gone" and "none". The correct word is "gone" Ordinarily one will not remember this sentence. The sentence, however, occurs in a poem in Palgrave's Golden Treasury, page 452, 1953 edition. The preceding words are : "The answers quick and keen, the honest look, the laughter, the love, they are gone." The word "they" therefore refers not to persons who are gone, but to their emotions, their cheerful disposition and their other qualities. The words are used in such unusual sense that a person who has read the poem with interest is not likely to forget them. Similarly clue No. 10 down in Quotes No. 57 is: "I..... him because he was late." The alternative words from which the choice was to be made were "hanged" and "banged." Prof. Kulkarni has stated that he had read the novel "Black Mischief" by Evelyn Waugh, in which the sentence occurs. It refers to a messenger who was banged because he was late. Prof. Kulkarni was therefore able to spot the missing word. He has, however, stated that if he had not read the novel, he would have found it extremely difficult to say which was the missing word in the quotation. But even making allowance for such ordinary sentences, which acquire significance by reason of the context in which they occur, it seems to us that most of the quotations are not of the standard claimed for them. In fact, as pointed out above, Rao more or less gave up this claim in his cross-examination.

47. There was considerable argument before us as to whether the clues are such as would stimulate the memory of the person who had previously read the quotations or as are otherwise suggestive of the author or the book in which they occur or of the missing word. It was also urged before us that as there was no cross-examination of Rao in regard to the petitioner's case on this point, that case should be accepted. In the affidavit in rejoinder it is stated that the sentences reproduced are an integral part of the theme of the work and/or book and/or paragraph. As illustrations of this statement, a list of few passages from books from which some quotations had been taken was attached to this affidavit. We do not think that much turns on this statement, because saying that a sentence is an integral part, of the theme of the book or paragraph is quite different from saying that the sentence "itself contains something which is likely to stimulate memory or which indicate what the correct word is. It is also doubtful whether this statement contained in the affidavit can be treated as evidence, having regard to the fact that oral evidence was led subsequently.

48. From Quotes No. 26 it is stated in each competition that "the quotation clues are selected so that as far as possible in each one of them there is some suggestion to help solvers to find the right words." It is, however, not stated that the clues are such as are likely to stimulate memory. No such statement has also been made in the petition. In his examination-in-chief Rao stated that he selects such sentences as provide some material for thought to the person trying to solve the clues. He, however, did not say that the material contained in the sentences is such as would stimulate memory or help the reader in recollecting the missing word. In his cross-examination he was asked whether there was any suggestion in clue No. 8 down in Quotes No. 27 which would help the reader in solving the clue. He replied that the word "good" appearing in the clue would suggest to the reader that the missing word is "copper" and not "cooper". No similar questions were put to Rao in regard to other clues. It is, however, clear that there was some cross-examination of Rao in regard to the above statement made by him in his examination-in-chief. Later on in his cross-examination the following question was put to Rao :

"In the quotations which have been selected for Quotes No. 39, is there anything-either in the style of the writing or in the topics to which the quotations relate, to suggest to a reader who has not read the particular works from which the quotations are taken, that the quotations are from a particular author or from a particular type of literature ?" The reply to this question was as follows

"In each of the quotations selected by me, there is, as far as possible, some suggestion to help the readers in solving the puzzle. To those who have read the particular work from which the quotation is taken, there is some suggestion in the quotation which would stimulate their memory about the work. To those who have not read that work, there is something in the clue which would enable them to reason out the appropriate word."

After Rao, gave this answer, no further questions were put to him on this point. It

was urged before us that the answer given by Rao that there is some suggestion in each quotation which would stimulate the memory of the person, who had read the particular work from which the quotation was taken, is a voluntary answer given by him. A witness is entitled to add to the answer called for by the question put to him in order to make it complete. Such an answer is also evidence and must be considered along with the other evidence in the case. We do not, however, think that we can accept Rao's statement that the quotations contain some suggestions which would stimulate memory, merely because no further questions were put to him. Its correctness and the value to be attached to it will have to be determined in the light of other evidence. It is also necessary to bear in mind that as the compiler of the quotes competition, Rao is naturally interested in seeing that the validity of this competition is upheld.

49. We will now briefly refer to the evidence of Prof. Kuikarni. He has stated that he does not find it an impossible task to spot the quotations given in the Quotes competitions and that he is able to identify from memory two to eight quotations in on a competition although sometimes he is not able to identify a single quotation. Sometimes he has vague recollections of some quotations. In that case he refers to books in his college library or in the University Library. If he is familiar with an author, he is sometimes able to spot the missing word even from a comparatively insignificant sentence given in a work of that author. Sometimes he is able to identify the author from the style of writing or from the kind of language used, Thus he was able to identify clue No. 8 across in Quotes No. 24 as being from one of the minor plays of Shaw. In regard to clue No. 12 across in the same quotes competition, he has stated that the archaic language used suggested an old play written by Webster. Sometimes from the topic of the quotation he is able to say what type of literature it is. As an instance he stated that clue No. 18 down in quotes No. 24 suggested a thriller. Clue No. 9 in quotes No. 26 appeared to him to be from a free verse contained in one of the two American Anthologies. In regard to clue No. 4 across in Quotes No. 24 he stated that it suggested a proverb. He has also stated that he won an all correct prize in Quotes No. 21, because it so happened that in this particular competition many of the quotations were from authors who were well known to him Prof. Kuikarni also admitted that there are several clues, such as No. 7 across in Quotes No. 26, which do not strike any chord in him. Many clues such as Nos. 8 and 7 across and No 21 down in Quotes No. 24 do not convey any suggestion to him either as to the author or the book or the type of work from which the quotation was taken. He has also admitted that some quotations like clue No. 17 across in Quotes No. 26, have no stylistic peculiarity.

50. Prof. Kulkarni was cross-examined in regard to Quotes Nos. 24, 26 and 57. The announcements in regard to the first two competitions, which contained the crossword square and the lists of alternative words, were shown to him. In regard to Quotes No. 57 the clues were typed on slips of paper. These were given to him when questions were put in regard to them. In Quotes No. 24 he was able to identify three authors. He correctly identified from memory five words and he

was wrong in regard to two. In Quotes No. 26 he identified seven authors and eight words. In Quotes No. 57 he was able to identify only one author and one word. He was not able to identify eleven authors, quotations from whose books had been given. In appreciating the evidence of Prof. Kuikarni regard must be paid to the fact that he had previously submitted entries for these competitions and had presumably seen their solutions and the lists of authors after these had been published. Even then he was able to remember only one author in Quotes No. 57.

51. Rao has stated that from the addresses and other descriptions given by the entrants he was able to say that compared to the entrants in the common-sense crossword puzzle, the entrants in the Quotes "competitions have a much better educational background. It is difficult to accept this statement of Rao. It is not likely that Rao could have personally scrutinized the entry forms, which were in thousands. Rao has admitted that the Illustrated Weekly is available in various bookstalls and is also sold by newspaper vendors. It is read by cross sections of the public, who know English, The great majority of them are not as well qualified as Prof. Kuikarni. Their task of solving clues will be rendered more difficult if more quotations are taken from books on topics such as science, art and music.

52. So far as the test of memory is concerned, the position therefore is that as stated by Rao, quotations may be selected from books in any branch of knowledge of which 50,000 or more copies have been published. Books in English are published all over the world. Although so far the selection has been confined to books published in India, England and America, it is open to the compiler to use books published in other English speaking countries such as Canada. There are thousands of books in each branch of knowledge. It is impossible for any person to read within his limited lifetime more than a small fraction of the books, from which the compiler may make his selection. Most of the quotations are also common place sentences, which no one is likely to remember after he has read them. Even though access to the books, from which the quotations have been taken, may theoretically be available, it would generally not be possible to discover them, as the names of books or of the writers are not given. Even the type of literature is not indicated. In many cases the sentences are small and do not give the context or the context is very meagre. Except in the case of few well known quotations, it would therefore be extremely difficult for an average member of the public to remember the quotations or the missing words. The skill, in so far as it consists in the capacity to remember and recollect, has therefore little scope in this competition.

53. In regard to the second type of skill, which is involved in this competition, Rao has stated that in choosing the fill-in or alternative word he sees to it that the fill-in word reads smoothly with the rest of the sentence. He has also stated that he never publishes a word with a missing letter from which at least two sensible words could not be made. Both the alternative words, therefore fit in the

sentence and make sense.

54. Rao has stated that in each clue there is some suggestion which would enable the reader to reason out the appropriate word. According to him any intelligent reader can find the correct word even if he does not know the author or the work from which the quotation has been taken. Prof. Kuikarni has stated that he is able to reason out with certainty some missing words in the quotations. In reasoning out the appropriate word he considers the style, grammar, idiom, etc. and tries to fit the word by re-constructing the context in which the sentence might have been used. The context which he reconstructs is naturally imaginary and it may or may not be the one used by the author. He has also stated that sometimes he is able to deduce a missing word even when he does not know the mannerisms, short-comings and peculiar preferences of the author. He was cross-examined in regard to quotes Nos. 24, 26 and 57. In quotes No. 24 he was able to reason out correctly two words and he was wrong in regard to five. In quotes No. 26 his answers were right in regard to two words and wrong in regard to one. In regard to one more he was not able to make a choice. In quotes No. 57 he was able to reason out all the words correctly. As I have stated previously, in considering this evidence regard must be paid to the fact that he had submitted entries for these competitions and had in all probability seen the solutions thereof. It is also necessary to mention that although he was able to reason out correctly all the words in Quotes No. 57, he did not win any prize in this competition, not even for a two error solution.

55. Mr. Palkhivala in his arguments referred to five clues in quotes No. 31 which, according to Rao, is a representative competition. He pointed out that even though the writers of these quotations are not known, the books from which the quotations are taken are not known and the contexts in which they occur are also not known, it is possible having regard to the trend of modern literature, the turn of the sentence, the style, idiom, grammar, etc. to say accurately at least in respect of four clues (No. 5 across, No. 20 across, No. 3 down and No. 9 down) what the correct word is. He therefore argued that while every clue may not contain a pointer to its solution, there are many clues which carry their answers and people, who are familiar with the trend and style of modern writing, can correctly make a choice of the missing word. There is some force in these arguments of Mr. Palkhivala. But while there are some suggestive clues, there are many others in which there is no guidance for determining which is the appropriate word and the choice is left more or less to guess work. Thus clue No. 3 across in Quotes No. 57 is : "a man could ask (or no better . . . than that". The alternative words given are "life" and "line". Prof. Kulkarni has stated that whether the word "life" or the word "line" fits in this sentence will depend on the context in which this sentence occurs in the writing from which the sentence has been taken. In the sentence "They have to feed the roses," to which reference has been made earlier, there is nothing to suggest to the person, who has not read the sentence previously, which of the two words "gone" and "none" is the correct one either would be equally appropriate. Similarly in regard to clue

No. 10 down in Quotes No. 57, Prof. Kulkarni has stated that he would have found it extremely difficult to say which the missing word in the quotation was if he had not read the book. Prof. Kulkarni has also admitted that in some cases the context provided by the clue is very meagre and that consequently in such cases the part played by reasoning in finding out the correct words is also meagre. Sometimes, therefore he is unable to make a choice between the two words. Thus in the case of clue No. 10 down in Quotes No. 28, he was not able to make a choice between "boor" and "door". His evidence shows that many times he is left with alternatives and if these are in respect of one or two clues only, he sends alternative entries not exceeding four. When the alternative words, from which he is not able to make a choice, are large in number, he does not submit any entry.

56. Although Rao has denied it, Prof. Kulkarni has admitted that the same sentence may convey different suggestions to persons having different habits and interests. Mr. Palkhivala has urged that one should visualise a normal and probable situation and not a remotely possible one. Ideas, tastes and interests differ. Different persons will therefore react differently and recreate different contexts. Thus in respect of clue No. 13 down in quotes No. 57, Prof. Kulkarni stated that he preferred the word "hate", but he admitted that in certain situations the word "have" would be equally appropriate. That by process of reasoning different conclusions may be arrived at was clearly brought out in the cross-examination of Rao and Prof. Kulkarni. Clue No. 6 across in Quotes No. 24 is; "He was a decent old chap in his . . . and the village was rather much for him." The alternatives given are "day" and "way". Prof. Kulkarni preferred "day" to "way", as according to him the expression "in his way" would take away to some extent the element of praise which is indicated by the earlier expression "decent old chap." Rao on the other hand stated that the appropriate word is "way" and not "day" as the expression "in his day" would indicate some time in the past life of the person concerned and as the words "decent old chap" do not go properly with the person who was an important person in the past. Clue No. 7 across in-Quotes No. 24 is : "And how hard you tried to make me smile when I was" The alternatives given are "mad" and "sad". Prof. Kulkarni preferred "sad", though he stated that there was some remote possibility that the word "mad" might be appropriate in some situations. Rao on the other hand preferred "mad" because according to him it is harder to make a sad person smile than to make a mad person smile. Clue No. 3 down in Quotes No. 24 is : "He understood the heavier retreats and defences of the" The alternatives are "tailor" and "sailor". Prof. Kulkarni preferred "sailor" on account of the military terminology used in this sentence, but he stated that if the expressions "heavier retreats and defences" had been used metaphorically, "tailor" might also be appropriate. Rao on the other hand stated that the appropriate word is "tailor" because the words "heavier retreats," and "defences" can be applied to the army or the navy, but not to an individual soldier or sailor. According to him the word "sailor" is inappropriate. Clue No. 11 down in Quotes No. 24 is : "But they must either rule

or get out Not and pander," the alternative words are "muddle" and "meddle". Prof. Kulkarni preferred "meddle" as the sentence appears to imply that the rulers would either rule firmly or get out, but would not act as mere busy bodies. It is also more clearly antithetical to the word "rule". Rao on the other hand stated that the missing word should be "muddle" because the words "meddle" and "pander" would be tautological. According to him "pandering" would include "meddling". It is clear from this evidence that how intelligent persons can for good and cogent reasons take different views as to which one of the two alternative words is the appropriate word. The choice of the correct word is therefore a matter of chance.

57. Reasoning may also not be of much assistance in many cases because authors do not always use accurate or precise language. For instance, in an ordinary conversation people use language which is adequate to convey their ideas, and do not bother very much about using grammatically correct language. A writer while reproducing a conversation will normally use the language which is spoken in such conversation and this is not always precise. This has been admitted both by Prof Kulkarni and Rao. Prof. Kulkarni has stated that authors do not always use expressions with the precision of a linguistic logician and that a novelist while reproducing an imaginary conversation between members of a strata of society, who do not always express themselves in precise language, would employ the same-imprecise language which is employed by that strata. Rao has also stated that many writers use wrong words. An instance of the use of imprecise language is clause No. 8 down in Quotes No. 57, in which the words used are "work with the storm." Clue No. 7 across in Quotes No. 3 i.e.: "His election experiences were somewhat" The correct word is "unique". This quotation has been taken from Fowler's Modern English Usage and King's English, and as stated by Rao, Fowler has given this sentence as an instance of the absurd use of the word "somewhat".

58. It seems to us therefore that while by the process of reasoning it may be possible to spot some missing words, in the case of most of them it is entirely a matter of chance that the word selected will correspond to that used by the author.

59. Rao has stated in his evidence that some competitors win prizes frequently. Thus Prof. Kulkarni won prizes in six competitions out of Quotes Nos. 25 to 57. Mr. Palkhivala laid considerable stress on this fact and argued that this fact clearly indicates that skill contributes substantially to success. We were also told that the average number of all correct entries between Quotes Nos. 25 to 57 is 7.4. Rao has stated that when there are 13 clues, the number of permutations and combinations possible is 213, i. e. 8192. The chance of success is therefore one in 8192, If the average number of entries in a competition is one and a half times this number, that is 12,288 (actually it is 15,725), the number of all correct entries according to the theory of chance would be 1.5, If a person were to correctly solve one clue, the number of permutations and combinations would

be 212, i. e. 4090. Consequently according to the theory of chance, three persons, who have correctly solved one clue, would be able to get all correct solutions. Similarly six persons who have solved two clues would be able to win the all correct prize by pure chance. The average number of all correct entries 7.4 can therefore be explained even on the theory of chance. The fact that some readers have won prizes more than once does not therefore necessarily indicate that substantial skill is involved in the competition. On the other hand, it may be possible to argue that the fact that on an average only one competitor in 2000 is able to solve all the clues; shows that skill is not the material factor which leads to success.

60. The evidence also shows that the compiler has from time to time tried to increase the gambling element in the competition. The quotations in the earlier competitions were mostly from standard works like Oxford Dictionary of Quotations, Stevenson's Books of Quotations, Benham's Quotations and standard Editions of Proverbs and Idioms. As standard books were being used, the number of all correct entries was fairly large, being 100, 191 and 135 in Quotes Nos. 21, 22 and 23 respectively. Rao has stated that in order to reduce the number of all correct entries and to make the prize worth winning, he started using popular editions of standard works such as the hooks printed in the Penguin Series, the Pocket Book Series, etc- This led to a considerable fall in the number of all correct entries. In Quotes Nos. 24 to 28 they were 5, nil, 1, 4 and 2 respectively. In view of the fact that the element of chance was considerably increased, the Advocate General argued that whatever might have been the position prior to Quotes No. 24, at least from Quotes No. 24 the competition became a competition of a gambling character. If the object of the competition was to provide a literary pastime and to foster and promote the knowledge of English literature among the public at large, as has been professed, the compiler would have felt happy at seeing the large number of all correct entries. (The highest number of all correct entries 191 in Quotes No. 22 was less than 2 per cent of the total number of entries, 14, 281). His action in making the clues more difficult to solve, therefore, shows that the real object of the competition was to appeal to the gambling instinct of the readers. Rao has also stated that with the same object to reduce the number of all correct entries he included on a few occasions more than two alternatives for a particular blank. He also increases the number of clues to 14 when the prize is raised to Rs. 15,000. He has also stated that he does not publish the names of the works from which the quotations are selected, because if he does so it could be easy for the readers to identify the quotations in subsequent competitions. Rao has also admitted that there are other and better quotations in the works of the same authors than those which he has selected for the Quotes competitions. Inferior sentences are therefore selected in order to make it difficult to find the solution. The result is that the winning of the prize is made very much more dependent on chance than on skill. Even Prof. Kulkarni appears to regard it a matter of luck to win a prize. He has stated that he sends entries in the name of his son because he and his

wife consider this to be auspicious.

61. On a careful consideration of the evidence it seems to us that the number of quotations, which an average competitor is likely to remember, so as to be able to spot the missing word from memory or by verifying it from the original work in which it has been used, is likely to be very small. In the case of most of the remaining clues, the choice of the word to which success attaches is almost entirely a matter of chance. In our opinion, a competition will not fall outside the scope of the Act, merely because in an attempt to get over the legal bar the compiler includes a small number of clues, which it is easy to solve either by resort to one's memory or by the process of reasoning. The picture must be looked at as a whole in order to determine whether the winning of the prize can be attributed substantially to skill or to chance. The present case seems to be similar in many respects to (1938) 1 K. B. 418. The finding of fact recorded by the Magistrate in that case was that in the greater number of cases the words chosen were the best and most appropriate having regard to clues, but that it was doubtful whether certain of the other words chosen were the most appropriate and had the best relation to the clues and that in the case of some of them the alternative word was better. The competition was held to be a lottery, because the prize was to be awarded not to the competitor who had put in the best effort, but to one whose solution coincided in the greatest number of particulars with the words selected beforehand by the competition editor. In the words of Lord Hewart C. J., the competitors were invited on a certain payment to have an opportunity of taking blind shots at a hidden target. The target in the present case is the word used by the author. For an average competitor this is a hidden target in respect of most of the clues and a person who uses his memory, knowledge and reasoning powers is generally in no better position than the one who makes a blind shot at it. While, therefore, there is an element of skill in the competition, for the most part it consists in lucky guessing of the words used by the authors of the different quotations. Success in the competition cannot, therefore, be said to depend to a substantial degree upon skill.

62. We therefore allow the appeal, set aside the order by which the rule was made absolute and dismiss the original petition.

63. The respondents will pay the costs of the appellants in the trial Court on the long cause scale with two counsel certified. The Taxing Master is granted discretion to allow more than Rs. 2,000 as instruction fees. The respondents will also pay the costs of the appellants of this appeal as on appeal from a long cause with two counsel certified.

64. Appeal allowed.