

(1932) 03 MAD CK 0023
In the Madras High Court

The Universal Mutual Aid and Poor Houses Association, Ltd.	APPELLANT
Vs	
A.D. Thoppa Naidu and Others	RESPONDENT

Date of Decision : 09-03-1932

Acts Referred:

Penal Code, 1860 (IPC) — Section 294A

Citation : AIR 1933 Mad 16 : (1933) ILR (Mad) 26 : (1932) 36 LW 610 : (1932) 63 MLJ 554

Hon'ble Judges : Waller, J; Krishnan Pandalai, J; Horace Owen Compton Beasley, J; Cornish, J

Bench : Full Bench

Judgement

Horace Owen Compton Beasley, Kt., C.J.—This is an appeal from a judgment of Stone, J., ordering the winding-up of the appellant

company. The learned trial Judge has found that the company was formed for an illegal purpose, the purpose being an offence u/s 294-A of the

Indian Penal Code, that is to say, conducting a lottery or keeping an office for the purpose of drawing a lottery, or publishing proposals relating to

the drawing in such lottery. No exception can be taken to the Memorandum of Association of the company where the objects of the company are

quite unobjectionable. Had the affairs of the appellant company been conducted strictly in accordance with those objects, no complaint whatever

could have been made against it. It is argued on behalf of the respondents that the Articles of Association disclose purposes far beyond those

appearing in the Memorandum of Association. It is contended that the Articles disclose that the object of the company was to conduct a lottery.

The appellants, on the other hand, contend that the object of the company was to benefit charity and that there was nothing illegal in the conduct of

the company. Reference must be made at this stage to the Memorandum of Association. There we find that, amongst other objects, one object is to raise general donation funds to carry out charitable objects. Of the special donation fund raised, not less than 30 per cent, is to be invested entirely and permanently in Government securities and not more than 70 per cent, on the security of Immovable property. Of the interest from the before mentioned investments, not less than 75 per cent, is to be utilised in granting personal loans to the donors and in paying relief bonuses to their heirs. At the extraordinary general meetings of the company held on the 25th November and the 17th December, 1930, in lieu of certain existing Articles certain new Articles were incorporated after sanction by the shareholders. The important Articles are Articles 16, 17, 18, 19, 20 and 21. Under these articles a donation certificate is to be granted to a person for each sum of Rs. 100 he pays either in a lump payment or by instalments as a contribution to the Poor Houses Special Donation Fund of the Association; and one lakh of such certificates is to form one series. Out of the interest accruing on the 70 per cent, of the fund invested on security of Immovable property, not less than 75 per cent, is to be utilised every year in granting loans ranging from Rs. 1,000 to Rs. 10,000 to 200 donation certificate-holders on their personal security without interest and relief bonuses to the heirs of 200 donation certificate-holders who die before getting the loan of Rs. 1,000 or more for every complete series. The names of the donors that are to get such loans are to be determined only by means of drawings. A donation certificate is to cease to exist when once it is drawn; or, if an advance of Rs. 500 is made to any heir of a donation certificate-holder, all rights to claim any benefits in respect of the same certificate are extinguished. The scheme is one under which anybody who takes a donation certificate of Rs. 100 becomes entitled to a loan of Rs. 1,000 free of interest and any one who takes certificates for Rs. 1,000 becomes entitled to a loan of Rs. 10,000 free of interest if he is lucky enough to get his certificate drawn in any of the annual drawings. A person can take a certificate in each and all of the series. But only 200 donation certificates are to be drawn each year. Similarly Rs. 500 is to be paid to the heirs of a deceased donation certificate-holder but there are only to be 200 of such payments in each year; and the heirs of those deceased donation certificate-holders who have got loans are not to be paid

the relief bonus. Subsequently, the Articles were still further altered and, in lieu of interest-free loans, cash bonuses were substituted. Instead of a

donation certificate-holder getting loans of from Rs. 1,000 to Rs. 10,000 according to the number of certificates held, he was to get a cash bonus

ranging from Rs. 500 to Rs. 5,000, that is to say, a half of the loan amounts.

2. The question to be considered is whether this scheme is a lottery or not. A lottery is not defined in the Indian Penal Code and we must,

therefore, look elsewhere for a definition. One definition of lottery is found in Webster's Dictionary, viz., a distribution of prizes by lot or chance.

In the present case is there anything which is determined by lot or chance? It is contended by the respondents that there is in the case of the loans

because the loan is dependent upon whether a certificate is drawn or not and the benefit is therefore dependent upon chance. It clearly is

dependent upon chance. Here the drawing is the chance and it cannot seriously be contended that the certificate-holder is dependent for his benefit

upon anything else than chance. Suppose a certificate-holder has only one certificate. If he is lucky he may get his benefit during the first year itself;

if he is not lucky, he may not get it, we are told, for at least sixty years. He may hold 12 certificates in which case he has 12 chances in every yearly

drawing and under the cash-bonus scheme he may be entitled to a cash bonus from Rs. 6,000 to 1,20,000 if all of them are drawn. The question is

whether this necessarily leads to the conclusion that the scheme is a lottery and, in considering the question, English decisions upon the point may

be more usefully considered since there is no definition of a lottery in the Indian Penal Code. One of these is *Sykes v. Beadon* (1879) 11 Ch. D.

170. In that case there was a Government securities trust or combination of more than twenty persons formed on the principle of investing the

subscriptions of the members and dividing the capital fund and profits among themselves by means of certificates convertible by annual drawings by

lot into preference dividend bonds bearing interest with a bonus. In the opinion of Jessel, M.R., this was a lottery and therefore illegal under the

Lottery Act. On p. 190 Jessel, M.R., says:

The holders of certificates are persons who subscribe money to be invested in funds which are to be divided amongst them by lot, and divided

unequally. That is, the persons who get the benefit of the drawings get a bond

bearing interest and a bonus which gives them different advantages, from the persons whose certificates are not drawn, and it depends upon chance which gets the greater or the lesser advantage. It is, therefore, a subscription by a number of persons to a fund for the purpose of dividing that fund between them by chance and unequally.

3. Another case is *Taylor v. Smetten* (1883) 11 Q.B.D. 207. In that case Taylor sold packets each containing a lb. of tea at 2s. 6d. a packet. In each packet was a coupon entitling the purchaser to a prize and the prizes varied in character and value. It was held that this constituted a lottery.

It was conceded that the tea was worth the money paid for it but what the purchaser did was he bought the tea coupled with the chance of getting something of value by way of a prize but without the least idea what that prize might be. In making his purchase he exercised no choice. What he bought he bought without any option or action of his own will but as the result of mere chance or accident. Another case is the *Premium Bonds* case, *Re International Securities Corporation, Limited* (1909) 99 L.T. 581. It is a case very similar to this. The learned trial Judge in the course of his judgment refers to an Australian case. According to the headnote, - there is unfortunately no report available in Madras - the facts were very similar to those in the present case. The headnote is set out in the judgment of the trial court and it is therefore not necessary to repeat it here. In that case on the facts it was held that that was a distribution of prizes by lot or chance and therefore a lottery. It was argued that there was no difference between a lottery and a wager. This argument was necessary because the appellants at first relied very strongly upon the decision of a Full Bench of this Court of which I was a member, viz., *Narayana Aiyangar v. Vellachami Ambalam* ILR (1927) 50 M. 696 : 52 M.L.J. 687, a chit fund case. It was there held that the promotion of a chit fund, wherein the number of subscribers is determined beforehand and in which every subscriber is entitled by its rules to get from the promoters of the fund the whole of the capital subscribed for by him either before or at the closing of the fund at a fixed time, is not a wagering contract within Section 30 of the Indian Contract Act even though some of the subscribers become by the rules entitled to get much more than they paid and such persons are determined by the drawing of lots. The headnote also states that this was

not an offence within Section 294-A of the Indian Penal Code and it is this no doubt that has caused this case to be thought to support the

appellants. The facts are set out at page 697 as follows:

In this case the defendants were the promoters of the chit fund in question. According to the rules framed by them for the fund they proposed to

work the chit as soon as 500 people became subscribers, each agreeing to subscribe one rupee a month. The rules further provided that the chit

was to run for 50 months and at the end of each month Rs. 50 was to be given by the defendants to the person who was determined by the casting

of lots out of the 500. Any person whose name was so drawn by lot either in the first month or in any of the succeeding 49 months got Rs. 50 and

he was thenceforward relieved from paying the further monthly instalments. After the 50th lot was cast the chit fund was to be closed and all the

remaining 450 people were to be given by the defendants each Rs. 50. Under such rules the plaintiffs who subscribed for two chits subscribed Rs.

36 for 18 months at the rate of Rs. 2 a month. As the defendants refused to run the chit fund after the 18th month the plaintiffs brought this suit for

Rs. 36 and interest. The defendants pleaded that the chit fund was a lottery, that the transaction between the parties amounted to a wagering

contract and that it was therefore unenforceable. Upholding the defendants' plea the Munsif dismissed the suit. Hence this revision petition.

4. In his Order of Reference to the Full Bench, Waller, J., stated that the two questions which arose were (1) whether the fund was a lottery, and

(2) if it was whether the subscriptions were recoverable. When the case came before the Full Bench, as it was then constituted, a finding was

called for as to whether an offence as defined by Section 294-A of the Indian Penal Code was committed when the transaction was formed. The

District Munsif found as follows:

The plea was raised by the defendants. The onus is on them. Nothing is placed before me by them wherefrom I could determine how the chit fund

was organised and advertised and whether any one who liked could join by merely paying subscriptions, points considered to be essential for a

satisfactory solution of the question whether the chit fund was a lottery. As observed in the order of remand, the rules of the fund as given in the

printed book filed with plaint are not sufficient to make this clear. In spite of

facilities having been afforded to defendants, they have not chosen to appear before me and let in evidence though I waited till this day. I must therefore answer the question in the negative.

5. When the case was further considered, as there was the finding that no offence u/s 294-A, Indian Penal Code, had been committed, we

proceeded to consider the only other point, viz., whether this amounted to a wagering contract. Throughout the judgment of the Full Bench there is

a discussion of that aspect of the case and that only. It is quite clear that there was no decision by the Full Bench that the chit fund in question was

not a lottery. Thus it was that at a late stage in the argument when the real effect of the Full Bench decision became apparent it was contended on

behalf of the appellants that wagering was the same thing as keeping a lottery. In my view, the two are not the same. In *Carlill v. Carbolic Smoke*

Ball Co. (1892) 2 Q.B. 484? Hawkins, J., defines a wager thus:

A wagering contract is one by which two persons, professing to hold opposite views touching the issue of a future uncertain event, mutually agree

that, dependent upon the determination of that event, one shall win from the other, and that other shall pay or hand over to him, a sum of money or

other stake; neither of the contracting parties having any other interest in that contract than the sum or stake he will so win or lose, there being no

other real consideration for the making of such contract by either of the parties. If either of the parties may win but cannot lose, or may lose but

cannot win, it is not a wagering contract.

6. In *Hampden v. Walsh* (1876) 1 Q.B.D. 189 a wager was described as a contract by A to pay money to B on the happening of a given event in

consideration of B paying money to him on the event not happening. In *Thacker v. Hardy* (1878) 4 Q.B.D. Cotton, L. J., says:

The essence of gaming and wagering is that one party is to win and the other to lose upon a future event, which at the time of the contract is of an

uncertain nature--that is to say, if the event turns out one way A will lose, but if it turns out the other way he will win.

7. In *Earl of Ellesmere v. Wallace* (1929) 2 Ch. D. 1 Russell, J., held that there cannot be more than two parties or two sides to a bet and that

there may be a multipartite agreement to contribute to a sweepstakes, which may be illegal as a lottery, if the winner is determined by chance, but

not if the winner is determined by skill. In the present case none of the parties are betting against each other. There are no two sides unless the subscribers on the one hand and the company on the other can be said to be sides. The scheme under consideration seems to me to have none of the elements of a wager but to possess all of those of a lottery as defined. It was also argued for the appellants that it was essential to a lottery that there should be a money prize. This is clearly not necessary as the case of *Taylor v. Smetten* (1883) 11 Q.B.D. 207 shows. Nor can it affect the question that the subscriber receives the whole of the amount subscribed by him back again on some future date. What constitutes a lottery is that some gain is to come to the subscriber dependent upon pure chance, any element of skill being absent. In my view, the learned trial Judge was right in holding that the conduct of the appellant company was illegal u/s 294-A of the Indian Penal Code. It was further contended that, as the company was formed for the purpose of benefiting charities and the lottery was merely an annexe to the original business, no offence can be held to have been committed. This, in my view, is clearly wrong. Section 294-A of the Indian Penal Code is sufficiently wide in its terms to negative any such contention as this, and, moreover, there is an English case which shows the contrary, namely, *Leng (Sir W. C.) & Co. ("Sheffield Telegraph") v. Sillitoe* (1929) 1 K.B. 366, the Football Coupon case. There a newspaper company was convicted of carrying on a ready money football betting business contrary to the Ready Money Football Betting Act of 1920. It was found as a fact by the Justices that on the date specified in the charge some persons bought the newspaper solely, and that other persons bought it partly, to obtain the coupon and so to acquire the chance or possibility of winning a prize. Lord Hewart, C.J., says at page 373: What is necessary for a conviction under the Act is that the defendant should be shown to be carrying on a ready money football betting business within the definition in Section 2 of the Act. In my opinion, it is quite immaterial that a person who is charged with carrying on such a business can show that he is also carrying on another business, however well established and well known it may be. If he annexes to an existing business a business which comes within the statute he is liable to the penalties provided by Section 1. And, to appreciate the relation between the printer or

publisher and his clients, it is not necessary to make a guess or to strike an average. What has to be examined is the nature of the transaction which

takes place between the printer or publisher and the individual purchaser of the thing published.

8. In the present case from the handbook published by the Company it is quite clear that the public are invited to purchase the certificates because

of the chance there is of securing valuable prizes. Although some of the objects of the Company may be philanthropic, it seems clear that the main

object of the Company was to conduct a lottery. No argument upon the facts that the illegal business was merely annexed to the real business can

prevail, nor could it, even if those facts were proved, in law prevail. It is further contended that no order for the compulsory winding up of the

Company ought to be made because it is still possible for the Company to conduct itself so as only to carry out the original purposes for which it

was formed and that the objectionable features of it can be removed. It seems to me, however, that by the removal of its obnoxious features the

substratum of the Company goes. Under these circumstances, the learned trial Judge was quite right in ordering it to be compulsorily wound up.

This appeal must, therefore, be dismissed with costs.

Cornish, J.

9. I am of the same opinion. I think it is impossible to regard the scheme of interest-free loans or cash-bonus scheme which supplanted it as

anything but a lottery. According to the scheme as adumbrated in the Articles of Association and in the prospectus issued by the Company a

donation of Rs. 100 to a fund called the Poor Houses Special Donation Fund gives the donor a certificate and the chance of that certificate winning

one of the 200 prizes ranging in amount from Rs. 500 to Rs. 10,000 at the annual drawing of certificates for these cash bonuses. The Articles and

the prospectus expressly provide that the prize-winners, as also the amount of the prize won by each, shall be determined only by means of

drawings. The scheme purports to ensure a certificate-holder receiving at least Rs. 500 in respect of his certificate for the arrangement is that if the

certificate is not drawn for a prize in the holder's lifetime his heirs will receive on his death a payment of Rs. 500, called a Death Relief Bonus. But

the winning of the other cash bonuses is purely a matter of chance dependent on

the luck of the draw. And this feature, in my judgment, entirely distinguishes the case from *Wallingford v. Mutual Society* (1880) 99 A.C. 685 where the fact that the apportionment of the loans to members of a benefit society was regulated by lot was held not to bring the arrangement within the Lottery Acts. The lot merely decided the order in which the loans were to be made to the members of the society, and the loans were not in the nature of prizes dependent on the chance of the draw.

10. There is no definition of "lottery" in the Indian Penal Code; so that the word, as it occurs in Section 294-A, Indian Penal Code, must bear its ordinary meaning, which is, a distribution of prizes by lot or chance without the use of skill : see *Re International Securities Corporation, Ltd*

(1909) 99 L.T. 581 and *Earl of Ellesmere v. Wallace* (1929) 2 Ch D. 1 An absolutely gratuitous distribution of chances, none of which had been

paid for by the participants would not, in the opinion of Darling, J., in *Willie v. Young and Stem-bridge*, amount to a lottery. But that is not the case

here. It is true that the prize money was provided from the interest received from investments made by the Company of the money subscribed by

the certificate holders. But the money was sub -scribed with the knowledge and with the object that it was to be invested and that a specified

proportion of the interest derived from the investments was to be distributed amongst the subscribers in cash prizes according to the luck of the

draw. That was the great inducement held out in the Company's prospectus to subscribe and become a certificate holder. The prospectus, at p.

34, in describing the advantages of taking certificates, says:

The maximum amount of cash bonus one can get in respect of each certificate in the drawings is Rs. 10,000. That is to say, if a person holds two

certificates in each of the twelve series, he will be entitled to a cash bonus up to Rs. 2,40,000 at Rs. 10,000 for each certificate in case all of them

come up first in the drawings.

11. In fact, the subscribers embarked their money in the Company for the purpose of participating in chances of drawing these big money prizes.

In my judgment the cash bonus scheme was clearly a lottery.

12. The learned advocate for the appellant laid great stress on the Full Bench ruling in *Narayana Aiyangar v. Veliachami Ambalam* ILR (1927) 50

M. 696 : 52 M.L.J. 687 in aid of his contention that there was no substantial

difference between a chit fund scheme and the present scheme. The Full Bench, however, did not rule that a chit fund was not a lottery. There was no occasion for it so to decide in view of the finding, called for from the Lower Court, that the necessary elements of an offence u/s 294-A, Indian Penal Code, were absent. The decision was confined to the question whether the subscribers to the chit fund could enforce the contract against the promoter; and it was held that they could, because the contract was not a wagering, and consequently a void, contract. But a lottery does not mean the same thing as a wagering contract, and Ramesam, J., who delivered the judgment of the Full Bench, was careful to point this out in criticising the use of the word "lottery" by Spencer, J., in *P.V. Veeranan Ambalam Vs. Ayyachi Ambalam*, to signify a wagering contract. The distinction between the two will be found further illustrated in *Stoddart v. Sagar* (1895) 2 Q.B. 474 and in Russell, L.J.'s judgment in *Earl of Ellesmere v. Wallace* (1929) 2 Ch. D. 1.

13. It remains to be considered what should be done with the Company. It is clear from the Articles and the prospectus that the Company is conducting this lottery as an important integral part of its business. According to the prospectus the sum to be annually expendible in providing cash bonuses does not fall far short of the amount to be allocated to the charitable undertakings of the company. But a lottery per se is not illegal in British India. An Act, V of 1844, entitled an Act for suppressing all lotteries not authorised by Government, declared unauthorised lotteries to be common nuisances. But it was repealed by Act XXVII of 1870 which amended the Indian Penal Code by introducing Section 294-A. The illegal aspects of a lottery, therefore, have to be found in Section 294-A, and consist in the keeping of any office or place for the purpose of drawing any lottery not authorised by Government or in publishing such lottery. There can, I think, be no doubt that the Company in keeping an office, as it does, for the conduct of this lottery, and in publishing in its Articles and prospectus the scheme of the lottery, is acting in contravention of Section 294-A. The business - at least a very substantial part of it - which it is carrying on is consequently an illegal business; and, such being the position, the case of *Re International Securities Corporation, Ltd* (1909) 99 L.T. 581 is good authority for ordering the compulsory winding up of the

company.