IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.8963 of 2019
and WMP No.9532 of 2019

Tmt.N.Maragatham ... Petitioner

Vs.

1. Union of India,
Rep. By its Secretary,
Ministry of Finance,
North Block, New Delhi.

2. The State of Tamil Nadu,
Rep. By the Secretary,
Department of Commercial Taxes and Registration,
St. George Fort, Chennai - 600 009.

3. The Deputy Registrar (Chits),
Office of the District Registrar,
Mayiladuthurai, Tamil Nadu.

4. The Mayavaram Financial Chit Corporation Ltd.,
Mayiladuthurai
rep. By its CEO Sri J.Manoj Padmanabhan,
No.13-A1, Cutchery Road,
Mayiladuthurai, Tamilnadu. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, issuance of a Writ of Declaration, to declare that the provisions of Section 64, 66 & 70 of the Chit Funds Act, 1982 is unconstitutional, ultra vires, arbitrary, null and void and violative of Article 14 of the Constitution of India.

For Petitioner : Mr.L.Swaminathan

For Respondents: Mr.T.M.Pappiah
2 and 3 Special Government Pleader

O R D E R

(Order of this Court was made by SUBRAMONIUM PRASAD, J.)

This instant public interest litigation has been filed challenging the constitutional validity of Sections 64, 66 and 70 of the Chit Funds Act, 1982. The petitioner, who claims to be a women entrepreneur, is in the business of manufacturing corrugated boxes for packing the materials. It is stated in the writ petition that in order to extend her business, she was in need of funds and she approached the Mayavaram Financial Chit Corporation Ltd., Mayiladuthurai. She subscribed for monthly chit under Chit No.117 of 2013 dated 13.08.2013 for Rs.50 Lakhs and had to pay Rs.1,25,000/- for 40 months. She was effecting payment continuously and during the 7th month, she bid for the chit, effecting payment of Rs.35 Lakhs. She states that dispute arose between her and the chit fund. She states that the 4rd respondent organizer of the chit fund filed a petition before the Deputy Registrar (Chits) and obtained an exparte decree dated 08.12.2015 for Rs.31,37,058/-. She states that the challenge to the exparte decree, was unsuccessful and revision petition viz., CRP (NPD) No.711 of 2018, has been filed in this Court. This Court by an order dated 23.02.2018, has directed the petitioner to pay a sum of Rs.10 lakhs within four weeks failing which, stay would be vacated. The petitioner states that she is not in a position to pay the amount.

2. The petitioner states that Chit Funds Act, has been passed by the Parliament under Entry 7 in List III of Schedule VII of the Constitution of India. Various State Governments have framed rules and State Government of Tamil Nadu has framed Tamil Nadu Chit Fund Rules, 1984.

3. Parliament has framed Chit Funds Act, to regulate the business of Chit. The statement of objects and reasons of the Chit Funds Act, 1982, reads as under.

> "A conventional chit is an old indigenous financial institution involving regular periodical subscriptions by a group of persons. It is, in law, a contract between the subscribers and the foreman which provides that the subscribers shall subscribe a certain sum by periodical installments for a definite period. Each subscriber shall, in his turn, as determined by lot or by auction or in such other agreed manner be entitled to the prize amount. There will be as many periodical installments as there are members. As there is a mutuality of interest among the

small number of subscriber to each chit fund, it constitutes a convenient instrument combining savings and borrowings.

In the wider context of examining in depth the activities of the non-banking financial intermediaries which term also includes institutions conducting chit fund or kuries, the Banking Commission had recommended inter alia , that it is essential to have a uniform chit fund legislation applicable to the whole country and as such either an all India Chit Funds Act may be enacted or a model law may be prepared for adoption by all the states. The Commission also observed that it would be desirable to provide in the legislation that only public limited companies can run chit funds.

The recommendations of the Banking Commission were examined by Government. The Reserve Bank, at the instance of the Government, drafted a model Bill to regulate the conduct of chit funds for adoption by all the State Governments. The Reserve Bank also sent the draft Bill to the Study Group on non-Banking companies constituted by it in June, 1974 under the Chairmanship of late Shri James S. Raj, the then Chairman of the Unit Trust of India. The Study Group was unanimously of the view that the Bill should be enacted as a Central legislation, as such a step. Besides ensuring uniformity in the provisions applicable to chit fund institutions throughout the country, would also prevent such institutions from taking advantage either of the absence of any law governing chit funds in any State or exploit the benefit of any lacuna or relaxation in any State Government concerned which in turn could seek the advice and assistance of the Reserve Bank on policy matters. Further, there should be according to the Group no objection to chits being conducted by private limited companies also and on a limited scale even by unincorporated bodies, such as, individuals, sole proprietorships and partnership firms.

The Bill has been finalized after taking into account the views of all the State Governments to whom a Draft Bill was sent for comments.

The scheme of the Act and the provisions made therein largely follow the pattern of chit fund legislations in force in some of the States and includes certain new provisions, such as, minimum capital requirements for companies conducting chit business, prohibiting chit fund companies from doing any other business, placing a ceiling on the aggregate chit amounts of chits that are being conducted by (2) chit fund institutions, providing for a self-contained machinery for the settlement of disputes between a foreman and the subscribers by means of arbitration, etc. The repeal of the existing State legislations on the subject has also been provided for in the Act.

4. Under the Chit Funds Act, there is a mechanism for settlement of disputes. Chapter XII of Chit Funds Act, deals with Disputes and Arbitration.

64. Disputes relating to chit business.—(1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the management of a chit business shall be referred by any of the parties to the dispute, to the Registrar for arbitration if each party thereto is one or the other of the following, namely:—

(a) a foreman, a prized subscriber or a non-prized subscriber, including a defaulting subscriber, past subscriber or a person claiming through a subscriber, or a deceased subscriber to a chit;

(b) a surety of a subscriber, past subscriber, or a deceased subscriber.

Explanation.—For the purposes of this sub-section, a dispute touching the management of a chit business shall include—

(i) a claim by or against a foreman for any debt or demand due to him from a subscriber, or due from him to a subscriber, past subscriber or the nominee, heir or legal representative of a deceased subscriber whether such debt or demand is admitted or not;

(ii) a claim by a surety for any sum or demand due to him from the principal borrower in respect of a loan by a foreman and recovered from the surety owing to the default of the principal borrower, whether such sum or demand is admitted or not; and

(iii) a refusal or failure by a subscriber, past subscriber or the nominee, heir or legal representative of a deceased subscriber to deliver possession to a foreman of land or any other asset resumed by him for breach of conditions of the assignment.

(2) Where any question arises as to whether any matter referred to for the award of the Registrar is a dispute or not for the purposes of sub-section (1), the same shall be decided by the Registrar whose decision thereon shall be final.

(3) No Civil Court shall have jurisdiction to

entertain any suit or other proceedings in respect of any dispute referred to in sub-section (1).

65. Period of limitation.—(1) Notwithstanding anything contained in the Limitation Act, 1963 (36 of 1963), but subject to the specific provisions contained in this Act, the period of limitation in the case of a dispute referred to the Registrar under section 64, shall—

(a) if the dispute relates to the recovery of any sum, including interest thereon, due to a foreman from a deceased subscriber, be three years, computed from the date on which such subscriber dies or ceases to be a subscriber; or

(b) if the dispute is between a foreman and a subscriber or a past subscriber, or the nominee, heir or legal representative of a deceased subscriber, and the dispute relates to any act or omission on the part of either party to the dispute, be three years from the date on which the act or omission with reference to which the dispute arose, took place.

(2) The period of limitation in the case of any dispute other than those referred to in sub-section (1) which are required to be referred to the Registrar under section 64 shall be regulated by the provisions of the Limitation Act, 1963 (36 of 1963), as if the dispute were a suit, and the Registrar, a Civil Court.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the Registrar may admit a dispute after the expiry of the period of limitation specified therein, if the applicant satisfies the Registrar that he had sufficient cause for not referring the dispute within such period.

66. Settlement of disputes.—(1) If the Registrar is satisfied that any matter referred to him or brought to his notice is a dispute within the meaning of section 64, he shall, subject to such rules as may be prescribed, settle the dispute himself, or refer it for disposal to a person appointed by him (hereafter in this Chapter referred to as the nominee).

(2) Where any dispute is referred under sub-section (1) for settlement to the nominee, the Registrar may, at any time for reasons to be recorded in writing, withdraw such dispute from the nominee and may settle the dispute himself, or refer it again for settlement to any other nominee appointed by him.

67. Procedure for settlement of disputes and powers of Registrar or nominee.—(1) The Registrar or the nominee hearing a dispute under section 66, shall, in addition to the powers conferred on him under that section, have the same powers as are vested in a Civil

Court while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of persons and examining them on oath;

(b) requiring the discovery and inspection of documents;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copies thereof from any court or office;

(e) issuing commissions for the examination of witnesses or documents; and

(f) any other matter which may be prescribed.

(2) Except with the permission of the Registrar or the nominee, no party shall be represented at the hearing of a dispute by a legal practitioner.

(3) (a) If the Registrar or the nominee is satisfied that any person, whether he is a subscriber or not, has acquired any interest in the property of a person who is a party to a dispute, he may order that the person who has acquired the interest in the property may be joined as a party to the dispute, and any decision that may be given by the Registrar or the nominee on the dispute shall be binding on the party so joined, in the same manner as if he were an original party to the dispute.

(b) Where a dispute has been referred in the name of a wrong person, or where all the necessary parties have not been included, the Registrar or the nominee may, if he is satisfied that it was due to a genuine mistake, order any other person to be substituted or added as parties to the dispute at any stage of hearing of the dispute on such terms as he thinks just.

(c) The Registrar or the nominee may, at any stage of the proceedings, either upon or without the application of either party and on such terms as may appear to the Registrar or the nominee to be just, order that the name of any party improperly joined be struck off.

(d) Any person who is a party to the dispute and entitled to more than one relief in respect of the same cause of action may claim all or any such reliefs, but if he omits to claim any such relief, he shall not be entitled to claim that relief, except with the leave of the Registrar or the nominee.

68. Attachment before judgment and other interlocutory orders.—(1) Where a dispute has been referred under section 64 and the Registrar or the nominee hearing the dispute is satisfied on enquiry or

otherwise that a party to such dispute, with intent to defeat or obstruct the execution of any award or the carrying out of any order that may be made,—

(a) is about to dispose of the whole or any part of his property; or

(b) is about to remove the whole or any part of the property from the jurisdiction of the Registrar, he may, unless adequate security is furnished, direct conditional attachment of the said property, and such attachment shall have the same effect as if it is made by a competent Civil Court.

(2) Where the Registrar or the nominee directs the attachment of any property under sub-section (1), he shall issue a notice calling upon the person whose property is so attached to furnish such security as he thinks adequate within a specified period, and if the person fails to provide such security, the Registrar or the nominee may confirm the order, and may, after the decision in the dispute, direct the disposal of the property so attached towards the claim, if awarded.

(3) Any attachment made under this section shall not affect the rights, subsisting prior to the attachment of the property, of persons who are not parties to the dispute, or bar any person holding a decree against the person whose property is so attached from applying for the sale of the property under the attachment of such decree.

(4) The Registrar or the nominee may, in order to prevent the ends of justice being defeated, make such interlocutory orders pending the award in a dispute referred to in sub-section (1) as may appear to be just and convenient.

69. Decision of Registrar or nominee.—When a dispute is referred to arbitration under this Chapter, the Registrar or the nominee, may, after giving a reasonable opportunity to the parties to the dispute to be heard, make an award on the dispute, on the expenses incurred by the parties to the dispute in connection with the proceedings and the fees and expenses payable to the Registrar or the nominee, and such an award shall not be invalid merely on the ground that it was made after the expiry of the period, if any, fixed for deciding the dispute by the Registrar, and shall, subject to appeal under section 70, be final and binding on the parties to the dispute.

70. Appeal against decision of Registrar or nominee.—Any party aggrieved by any order passed by the Registrar or the nominee or the award of the

Registrar or the nominee under section 69, may, within two months from the date of the order or award, appeal to the State Government."

5. A perusal of the Act would show that the Act is a self contained Code having its own mechanism for resolution of disputes and it also gives the hierarchy of authorities before whom appeals lie.

6. In the writ petition, the only ground which is raised by the petitioner is that in her case, the Deputy Registrar (Chits) has decided the arbitration proceedings under Sections 64 and 66 of the Act and he is not conversant with the legal proceedings and the Secretary to Government of Tamil Nadu, who is the Appellate Authority under Section 70 of the Chit Funds Act, is also not legally trained to decide the appeal.

7. Heard the learned counsel for the parties.

8. A Section in an Act or a legislation can be challenged only on the ground of competence of the legislators, who pass the Act or that it is ultra vires the Constitution or on the ground that it is manifestly arbitrary.

9. None of the grounds stated above, have been raised by the petitioner to strike down the various provisions in the Chit Funds Act, 1982.

10. The petitioner has pointed out Rule 48 of the Tamil Nadu Chit Funds Act, 1982, which reads as under.

48. Qualifications for appointment as Registrar's nominees -

(1) The State Government may appoint a person to be a Registrar's nominee provided that,-

a) he has practiced as an Advocate, Pleader or Vakil for not less than five years, or

b) he is enrolled as an Advocate or holds a degree or other qualification in law of any University established by law or of any other authority which entitles him to be enrolled as an Advocate, and either (i) has held office not lower in rank than that of Deputy Registrar of Chits for not less than five years or (ii) possesses good knowledge and experience of chit funds legislation and practice.

(2) The State Government may, by notification in the official Gazette, appoint as many persons as might be necessary to act as Registrar's nominees for settlement of disputes arising under the Act."

11. Rule 48 provides that the Registrar's nominee, should hold a law degree, which entitles him to be enrolled as an Advocate or he should have held an office not lower than the rank of Deputy Registrar (Chits) for not less than five years. It cannot be said that a Registrar appointed under the Chit Funds Act, 1982, is not well versed with the provisions of the Act. The Rules specifically provide and takes care that the Registrar does not delegate the power to adjudicate the dispute to a person, who is not well versed in law. The Registrar under Chit Funds Act cannot be said to be incompetent to adjudicate the dispute, even if he does not have a law degree, for the simple fact that he is holding the post of Registrar of Chit Fund, which is sufficient for understanding the nuances of Chit Fund operations.

12. The Act also provides for an appellate remedy to the Government. The petitioner's grievance that in several cases Registrar's nominee does not possess the qualification as provided under Rule 48 of the Tamil Nadu Chit Funds Rules, 1984, would be one of the grounds before the appellate authority to set aside the order. This cannot be a ground to set aside the legislation. There is no merit in the writ petition. Therefore, writ petition is dismissed. No Costs. Consequently, the connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary,
Union of India,
Ministry of Finance,
North Block, New Delhi.

2. The Secretary,
State of Tamil Nadu,
Department of Commercial Taxes and Registration,
St. George Fort, Chennai - 600 009.

3. The Deputy Registrar (Chits),
Office of the District Registrar,
Mayiladuthurai, Tamil Nadu.

+1cc to Mr.L.Swaminathan, Advocate Sr.31446
+1cc to the Government Pleader Sr.31997 & 31298

W.P.No.8963 of 2019
and WMP No.9532 of 2019

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srg 10/5/2019