

(2014) 09 KL CK 0121
High Court Of Kerala
Case No: WP(C). No. 13649 of 2014 (E)

Sheeba Kuries Ltd.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision: Sept. 3, 2014

Acts Referred:

- Chit Funds Act, 1982 - Section 19, 19(3), 19(4), 2(b), 4

Citation: (2014) 4 KHC 126 : (2014) 4 KLJ 237 : (2014) 4 KLT 204

Hon'ble Judges: A.M. Shaffique, J

Bench: Single Bench

Advocate: K.M. Sathyanatha Menon and Kavery S. Thampi, Advocate for the Appellant; T. Rajesh, Advocate and Tom K. Thomas, Spl. Govt. Pleader, Advocate for the Respondent

Judgement

A.M. Shaffique, J.

This writ petition is filed seeking for a declaration that the information-cum-service/collection centers set up by the petitioner in the State of Kerala in respect of chits registered in Maharashtra does not amount to opening a new place of business within the meaning of Section 19(4) of the Chit Funds Act, 1982 (for short "the Act") and for a declaration that the petitioner need not register their chit which is already registered in the State of Maharashtra and for a further direction to respondents 5 and 6 not to take any coercive steps or register any crime against the petitioner for running the collection centre of their chit.

2. The facts involved in this case would disclose that the petitioner company is running a chit under the name and style Sheeba Finance and Kurries Ltd., which is a company registered in the State of Maharashtra. According to them, all chits are commenced and conducted from the registered office at Pune in accordance with the Chit Fund Act, 1982 and the Maharashtra Chit Fund Rules, 2004. Since their business expanded considerably, they have arranged for services like enquiry, door to door service to the customers and for establishment of collection centres of the

chit amount from the States where the subscribers reside. They have therefore started information-cum-collection centres at Kochi, Kottayam and Melkulangara in the State of Kerala. This information-cum-collection centres, according to them, are neither branch office or sub office or a place of business where the chit is commenced and conducted by the petitioner. It is contended that the said centres do not conduct any chit nor it enrolls customers.

3. It is stated that on 19.5.2014, an inspection was conducted in the collection centre and certain documents had been seized. According to the petitioner, such action was totally illegal as the petitioner was not conducting any chit in the State of Kerala. Further, on 27.5.2014, the 5th respondent conducted another raid in the Ernakulam collection centre of the petitioner and seized cash and other materials. Officers of the petitioner company, including Managing Director, were arrested on the ground that office being conducted by the petitioner is illegal and thereafter released on bail. It is contended by the petitioner that respondents have no authority to take action against the petitioner as the petitioner is a validly registered chit company and does not have any office in the State of Kerala.

4. It is contended that the centres opened by the petitioner in the State of Kerala are only for information and collection of subscription amount and therefore the office does not come within the purview of Section 19 of the Act.

5. A statement is filed on behalf of the 4th respondent inter alia stating that on inspection of the branches of the petitioner, it is seen that the petitioner is doing chit business including execution of agreement and other documents and receipt of money at their branches including those at Kochi, Kottayam and Melkulangara. According to the respondent, they are conducting chit business in State of Kerala, which is in violation of the provisions of the Act and prohibited under Section 4 of the Act. The petitioner is liable to be prosecuted under Sections 76 and 79 of the Act. Further, they referred to Section 82(2) of the Act to indicate that police has power to enter and search any place where it is found that the business of chit is conducted in contravention of the provisions of the Act as contemplated under Section 82(2) of the Act. It is further stated that if there is any violation of the provisions of the Act, the same shall be done only after complying with Rule 64 of the Kerala Chit Funds Rules, 2012.

6. The petitioner has filed a reply inter alia stating that the provisions of Section 82(1) shall not apply and police has no power unless there is a direction from the Registrar.

7. Heard the learned counsel for the petitioner and the learned Special Government Pleader Sri. Tom K. Thomas.

8. The short question to be considered in this writ petition is regarding the right of the respondents to inspect and seize records from the offices maintained by the petitioner company in the State of Kerala.

9. Admittedly, the petitioner is a company registered in the State of Maharashtra and has sanction from the Registrar of the chits for conducting chit business in the State of Maharashtra. It is also not in dispute that the petitioner has opened certain offices in the State of Kerala. The first question is whether opening of such place of business requires sanction in terms of Section 4(1) of the Act or approval of the Registrar in terms of Section 19 of the Act.

10. Section 4(1) reads as under:

"4. Prohibition of chits not sanctioned or registered under the Act:- (1) No chit shall be commenced or conducted without obtaining the previous sanction of the State Government within whose jurisdiction the chit is to be commenced or conducted or of such officer as may be empowered by that Government in this behalf, and unless the chit is registered in that State in accordance with the provisions of this Act.

Provided that a sanction obtained under this sub-section shall lapse if the chit is not registered within twelve months from the date of such sanction or within such further period or periods not exceeding six months in the aggregate as the State Government may, on application made to it in this behalf, allow."

It is not in dispute that if a person intends to commence a chit within the State of Kerala, previous sanction has to be obtained from the Government or such other empowered authority. Section 2(b) and (e) is defined as under:

"2. Definitions:- In this Act, unless the context otherwise requires,-

(a) xx xx xx

(b) "chit" means a transaction whether called chit, chit fund, chitty, kuri or by any other name by or under which a person enters into an agreement with a specified number of persons that every one of them shall subscribe a certain sum of money (or a certain quantity of grain instead) by way of periodical instalments over a definite period and that each such subscriber shall, in his turn, as determined by lot or by auction or by tender or in such other manner as may be specified in the chit agreement, be entitled to the prize amount.

xx xx xx

(e) "chit business" means the business of conducting a chit.

xx xx xx"

11. The short question is whether an enquiry counter or collection center by itself would amount to conduct of business.

12. Going by the definition of "chit" and "chit business", it is clear that conducting of chit involves execution of agreement and also payment of prize amount to the prized subscriber who is determined either by lot, auction or tender. If the petitioner is only collecting subscription amount from the subscribers, it will not amount to

conduct of chit business. Payment of subscription amount can be made in different forms, either by payment through bank, by way of cheque, demand draft or any other mode of payment. It is not necessary that the subscriber pays the amount directly in a particular office and there is no statutory provision for the same. The person conducting the chit can collect the amount directly from the subscribers' premises. Therefore, collection of subscription amount by itself will not amount to conducting of chit business. However, if such offices are used for execution of agreement and for determining prized subscriber by conducting lot, auction or tender, the same will amount to conducting of chit business and in such an event, sanction is required in terms of Section 4(1) of the Act and has to comply with other formalities despite the fact that the petitioner has a registration in the State of Maharashtra. Same is the situation with reference to opening of new place of business. Restriction imposed under Section 19 apparently applies only in respect of persons carrying on chit business within the jurisdiction of the Registrar where the registered office or the principal place of business is situated. Section 19(3) is the relevant provision as far as this case is concerned. Section 19 reads as under:

"19. Restriction on opening of new place of business:- (1) No person carrying on chit business shall open a new place of business without obtaining the prior approval of the Registrar within whose territorial jurisdiction his registered office or, as the case may be, the place or the principal place of business is situated.

(2) Before granting approval under sub-section (1), the Registrar shall consult the Registrar of that State within whose territorial jurisdiction the new place of business is proposed to be opened and shall also keep in view the financial condition and methods of operation of the foreman, the extent to which public interest will be served by the opening of the new place of business and such other matters as may be prescribed.

(3) Where a person carrying on chit business opens a new place of business in a State other than the State (hereinafter referred to as the State of origin) in which his registered office or the place or the principal place of his business is situated, the Registrar of the State in which such new place of business is opened may also exercise and perform any of the powers and functions which the Registrar of the State of origin may exercise and perform in respect of the chit business carried on at such new place of business.

(4) For the purposes of this section, "place of business" shall include any branch office, sub-office, or any place of business where the chit business may be conducted by such person."

Section 19(3) would apply to the facts of the present case in respect of a person carrying on chit business in another State. It is indicated that the Registrar of the State in which such new place of business is opened may also exercise and perform any of the powers and functions which the Registrar of the State of origin may

exercise and perform in respect of the chit business carried on at such new place of business. Therefore, coming to Section 19(3), the short question is whether the petitioner is conducting chit business in the collection centres at various places within the State of Kerala. This apparently is a question of fact.

13. The learned Special Government Pleader relied upon Section 82 of the Act, which reads as under:

"82. Power to enter and search any place and to seize any documents:- (1) If the Registrar or any other officer authorized by him in this behalf, has reason to suspect that any person conducts, or is responsible for the conduct of, a chit in any place in contravention of the provisions of this Act, he may, for reasons to be recorded in writing and at any reasonable time, enter into and search such place, and may seize such books, registers, accounts or documents as may be necessary.

(2) The Registrar or officer authorized by him in this behalf, may apply for assistance to an officer in charge of a police station and take police officers to accompany and assist him in discharging his duties under sub-section (1).

3) All searches under sub-section (1) shall be made in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974)."

Going by sub-section (2) of Section 82, it cannot be disputed that a search in a place can be conducted only by the Registrar or any other officer authorized by him, who can even apply for assistance to an officer in charge of a police station for assisting him in discharge of his duties under sub-section (1).

14. Having regard to the aforesaid statutory provision, I am of the view that the police officers can conduct any search in terms of Section 82 of the Act only in accordance with the directions issued by the Registrar or any officer authorized by him. If any search is conducted in violation of the aforesaid statutory provision, it will become invalid in the eye of law.

15. As far as the claim of the petitioner is concerned, if the petitioner is only conducting collection centre or an office is set up for enquiries alone, the same would not amount to "place of business" for conducting chit business nor does it amount to a branch office for chit business. Whereas, if the petitioner enters into an agreement with the subscribers and pays prize amount by determining the prized subscribers either by way of lot, auction or tender from these collection centres, it will amount to non-compliance of the provisions of the Act. It is for the 2nd respondent to verify whether any such business is being conducted in the premises in question.

Under these circumstances, this writ petition is disposed of as under:

(i) It is declared that the petitioner has no obligation to register their chit in State of Kerala, or to get approval of their collection centres in terms of Section 19 of the Act,

if they are not conducting "chit business" in State of Kerala, as stated above.

(ii) The above declaration shall not affect the right of respondents 2 to 5 to verify whether "chit business" is conducted by the petitioner in the State of Kerala.