A REGISTRAR OF FIRMS, SOCIETIES AND CHITS,

UTTAR PRADESH

v.

SECURED INVESTMENT COMPANY, LUCKNOW AND ANOTHER.

B

DECEMBER 17, 1987

[B.C. RAY AND JAGANNATHA SHETTY, JJ.]

Prize Chits—Prohibited category under section 2(e) of the Prize Chits and Money Circulation Scheme (Banking) Act, 1978—Prohibition of Participation therein.

C

The respondent, a partnership firm, carried on business termed as a "Scheme for Investment". The Registrar of Firms, Societies and Chits, the appellant, holding the view that the investment scheme of the D **respondent company fell within the prohibited category of prize chits as defined in section 2(e) of the Prize Chits and Money Circulation Scheme (Banking) Act, 1978, seized all the documents of the company and directed the concerned banks not to have accounts in relation thereto. The respondent challenged the action of the appellant by a writ petition in the High Court. The High Court allowed the Writ Petition, quashing** E **the orders of the appellant. The appellant appealed to this Court by special leave.**

Allowing the appeal, the Court,

HELD: The prize chit, by a simple definition, includes a scheme F **by which a person in whatever name collects moneys from individuals for the purpose of giving prizes and refunding the balance with or without premium after the expiry of a specified period. The reach and range of the definition of 'Prize Chit' is sweeping. The participation of any person in such chit or scheme has been prohibited, the object being that people should not be attracted to invest their moneys in the hope of** G **getting prizes or gifts. [468A-B, C]**

There is no doubt that the scheme of the company is primarily for the benefit of the promoter or the company at the cost of the subscribers. Section 2(e) of the Act was intended to cover all such arrangements or schemes. It is emphasized that the Act was intended to ban all kinds H **of prize chits where people part with their money and risk the chance of**

getting prizes and gifts, and to protect the people from exploitation. Any scheme or arrangement in which a person agrees to lose or is make to part with a portion of his payment against the chance of getting any prize or gift, should be considered as prize chit falling within the inclusive definition under Section 2(e). The scheme of the company is nothing but prize Chit as defined under Section 2(e) of the Act. The conclusion of the High Court is patently erroneous and is unsustainable both on facts and law. The action of the Registrar, appellant, upheld. [473E-H; 473A-B]

OBSERVATION: **The Registrar of the firms will, while taking action against the persons or firms under the Act, take care to see that the members of the scheme are not denied, their contributions or prizes which they are legitimately entitled to, if the prize chit is allowed to be run for the full term.** [473B-C]

Srinivasa Enterprises and others **v.** *Union of India etc.,* **[1981] 1 SCR 801 at 804 and** *Reserve Bank of India* **v.** *Peerless General Insurance and Investment Co. Ltd.,* **A.I.R. 1987 SC 1023, referred to.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1988 of 1982.

From the Judgment and order dated 20.4.1982 of the High Court of Allahabad in Writ Petition No. 630 of 1982.

Anil Dev Singh and Mrs. Shobha Dikshit for the Appellant.

L.M. Singhvi and C.L. Sahu for the Respondent.

The following Judgment of the Court was delivered by

JAGANNATHA SHETTY, J. This appeal by special leave, is by the Registrar of Firms, socictics and chits of the State of Uttar Pradesh and directed against the judgment and order passed by the High Court of Allahabad in writ petition No. 630 of 1982.

The said writ petition was filed by the respondent which is a partnership firm called as "M/s. Secured Investment Company" ("The Company"). The company mainly carries on business at Lucknow. It has branch offices at Kanpur and Bareilly. The nature of business of the company is termed as "a scheme for investment". The question raised in this appeal is whether that scheme for investment falls within

A the category of 'prize chit' as defined under the Prize Chits and Money Circulation Scheme (Banning) Act, 1978 (for short "The Act"). The Registrar of Firms, Societies and Chits was of the opinion that the scheme of the company falls within the prohibited category of prize chits as defined under the Act. So he seized all the documents of the company and also directed the concerned banks not to have B accounts in relation thereto. Challenging the action of the Registrar, the company moved the High Court with a writ petition under Art; 226 of the Constitution. The High Court allowed the writ petition and quashed the orders made by the Registrar.

In order to correctly appreciate the question raised in this C appeal, it is better to have first the clear picture of the law governing the question. Section 3 of the Act imposes a ban not merely on promoting or conducting any prize chit or money circulation scheme, but also on participation in such chit or schemes. Section 4 makes a contravention of the provisions of Section 3 punishable with imprisonment which may extend to three years or with fine which may extend to D Rs.5,000 or with both. Section 5 provides penalty for other offences like printing or publishing any ticket, coupon or other document for use in the prize chit or money circulation scheme with a view to promote such scheme in contravention of the Act. Section 6 deals with offences by companies. Section 7 confers power on the police officers not below the rank of an officer in charge of a police station to enter, E search and seize. Section 8 provides for the forfeiture of newspapers or other publications containing prize chit or money circulation scheme. Section 11 provides exemption to certain categories of prize chits or money circulation schemes. The prize chits or money circulation schemes promoted by the State Government or any officer or authority on its behalf, or by a Company wholly owned by a State Govern- F ment are exempted from the provisions of the Act.

'Conventional Chit' has been defined under Section 2(a), and "Prize Chit" has been defined under Section 2(e) of the Act. Conventional Chit stands excluded from the definition of prize chit, and so much so, the Conventional Chit remains untouched by provisions of the G Act. The definition of the conventional chit is as follows:

> "Section 2(a). "Conventional Chit" means a transaction whether called chit, chit fund, *kuri* or by any other name or under which a person responsible for the conduct of the chit enters into an agreement with a specified H number of persons that every one of them shall subscribe a

certain sum of money (or certain quantity of grain instead) by way of periodical instalments for 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 provided for in the chit agreement, be entitled to a prize chit."

We may presently refer to the definition of 'prize chit' and before that it is better to have a little bit of history of chit transactions. The words 'Chitty' or 'kuri' Chit or Chit Fund appear to be the common words but with regional variations. Although there is no clear evidence to show the exact place of origin of chit fund, the available text [(i) 'Chit Finance' by C.P. Somanath Nayar (1973); (ii) Chit Funds and Finance Corporation by S. Radha Krishan an (1974)] indicate that it has spread from the Southern most parts of India. In the Travancore area of the State of Kerala it is generally called 'chitty'. Within the same State, in Cochin and Malabar areas it is popularly called 'kuri'. In other parts of the country it is ordinarily called 'chit' or 'chit fund'. In Tamil it is termed as 'chit'. In Malayalam it is called as 'chitti' or 'kuri'. These terms appear to be synonymous, meaning thereby a written piece of paper. These transactions were purely indigenous institution. They originated in village life organised by a small group of people well know to each other. They agreed to contribute periodically a certain amount of grain or money and to distribute the entire collection which was termed as 'fund' to one of the subscribers. It was carried on with some mutually agreed basis. In the nineteenth century, if not earlier, it was very popular in central Travancore and Trichur areas probably among Church congregations.

The chit funds appear to have originated from two legitimate demands of the rural people: (i) a necessity for a lump sum amount to meet some unusual expenditure and (ii) to provide a form of accumulated saving when people had no banking facilities. It was considered as a source of credit and mode of saving. It was meant for mutual benefit in which some people joined to save and others to borrow. What distinguishes the chit fund, however, from other financial transactions is that it connects the borrowing class directly with the lending class. The pooled saving is lent out to the same group of contributors. A chit fund collects the savings of the members by periodical subscriptions for a definite period. At the same time, it makes available the pooled savings to each member by turn as agreed by them. The collected fund may be given either by drawing lots or by bidding. Lots are drawn periodically and the member whose name appears on the win-

ning chit gets the collection without any deductions. He, however, continues to pay his subscriptions but his name is removed from subsequent lots. Thus every member gets a chance to receive the whole amount of the chit. This is generally the features of a conventional chit. It is operated without a professional promoter or manager and without any risk of loss of capital.

During the course of years, the chit funds became more and more popular and attractive. In the usual process of social growth, the chitties crossed boundaries of its birth place. It assumed new institutional forms with emergence of new types of enterpreneurs. The partnership firms, private or public limited companies took over the chit business in various forms. They gave different names, such as price chit, lucky-draw, benefit scheme or money circulation scheme. They offered prizes to attract subscribers. The basic features, however, remained the same in all such schemes. Periodically the names of the subscribers were put to draw and the lucky member was given a prize either in cash or in kind like articles of utility. The subscribers were also given refund of a portion of their contributions. This became regular business in ever so many people.

Undoubtedly, this rapid growth of chit funds has carried with it some unhealthy features of exploitation. That has been graphically described by Krishna Iyer, J. in *Srinivasa Enterprises & Ors.* v. *Union of India etc.*, [1981] 1 SCR 801 at 804 as follows:

> "The quintessential aspects of a prize chit are that the organiser collects moneys in lump sum or instalments, pursuant to a scheme or arrangement, and he utilises such moneys as he fancies primarily for his private appetite and for (1) awarding periodically or otherwise to a specified number of subscribers, prizes in cash or kind and (2) refunding to the subscribers the whole or part of the money collected on the termination of the scheme or otherwise. The apparent tenor may not fully bring out the exploitative import lurking beneath the surface of the words which describe the scheme. Small sums are collected from vast numbers of persons, ordinarily of slender means in urban and rural areas. They are reduced to believe by the blare of glittering publicity and the dangling of astronomical amounts that they stand a chance—in practice negligible—of getting a huge fortune by making petty periodical payments. The indigent agrestics and the proletarian urbani-

tes, pressured by dire poverty and doped by the hazy hope of a lucky draw, subscribe to the scheme although they can ill afford to spare any money. This is not promotion of thrift or wholesome small savings because the poor who pay, are bound to continue to pay for a whole period of a few years over peril of losing what has been paid and, at the end of it, the fragile prospects of their getting prizes are next to nil and even the hard earned money which they have invested hardly carries any interest. They are eligible to get back the money they have paid in driblets, virtually without interest, the expression 'bonus' in s. 2(a) being an euphemism for a nominal sum. What is more, the repayable amount being small and the subscribers being scattered all over the country, they find it difficult even to rocover the money by expensive, dilatory litigative process."

In 1974, the Reserve Bank of India intervened. The Reserve Bank constituted a Study Group headed by Dr. J.S. Raj to examine the adequacy of existing statutory provisions in regulating the conduct of business by non-banking companies. The Study Group was also asked to suggest remedial measures so as to ensure that the activities of such companies, in so for as they pertained to the acceptance of deposits, investment, lending operations, etc. subserved the national interest.

The Study Group went into the matter in some depth. Chapter VI of their report was devoted to Miscellaneous Non-Banking Companies which were conducting prize chits, benefit/savings scheme or lucky draws etc. Paragraph 6.3 of the report contains interesting informations and it reads as follows:

"6.3 Companies conducting the above types of schemes are comparatively of a recent origin and of late, there has been a mushroom growth of such companies which are doing brisk business in several parts of the country, especially in big cities like Ahemdabad, Bangalore, Bombay, Calcutta and Delhi. They had also established branches in various States. These companies float schemes for collecting money from the public and the modus operandi of such schemes is generally as described below:

The company acts as the foreman or promoter and

collects subscriptions in one lump sum or by monthly instalments spread over a specified period from the subscribers to the schemes. Periodically, the numbers allotted to members holding the tickets or units are put to a draw and the number holding the lucky ticket gets the prize either in cash or in the form of an article of utility, such as, a motor car, scooter, etc. Once a person gets the prize he is very often not required to pay further instalments and his name is deleted from further draws. The schemes usually provide for the return of subscriptions paid by the members with or without an additional sum by way of bonus or premium at the end of the stipulated period in case they do not get any prize. The principal items of income of these companies are interests earned on loans given to the subscribers against the security of the subscriptions paid or on unsecured basis as also loans to other parties, service charges and membership fees collected from the subscribers at the time of admission to the membership of the schemes. The major heads of expenditure are prizes given in accordance with the rules and regulations of the schemes, advertisements and publicity expenses and remuneration and other perquisites to the directors."

The Study Group recorded its conclusions in paragraph 6.11 as follows:

"From the foregoing discussion, it would be obvious that prize chits or benefit schemes, benefit primarily the promoters and do not serve any social purpose. On the contrary, they are prejudicial to the public interest and also adversely affect the efficacy of fiscal and monetary policy. There has also been a public clamour for banning of such schemes; this stems largely from the mal-practices indulged in by the promoters and also the possible exploitation of such schemes by unscrupulous elements to their own advantage. We are, therefore, of the view that the conduct of prize chits or benefit schemes by whatever name called should be totally banned in the larger interests of the public and that suitable legislative measures should be taken for the purpose if the provisions of the existing enactments are considered inadequate. Companies conducting prize chits, benefit schemes, etc., may be allowed a period of three years which may be extended by one more year to wind up

their business in respect of such schemes and/or switch over to any other type of business permissible under the law." A

It will be seen that the Study Group was of the opinion, that prize chits or benefit schemes primarily benefit the promoters and do not serve any social purpose. They are prejudicial to the public interest. They adversely affect the fiscal and monetary policies of the B Government. The Study Group was firmly of the view that the conduct of prize chits or benefit schemes by whatever name called should be totally banned in the larger interests of the public.

The Government of India accepted that report, and decided to implement the above recommendations of the Study Group. In 1978, C the Act with which we are concerned was passed in the Parliament. The Act provides for banning the promotion or conduct of 'money circulation scheme' or 'prize chit' which have been defined as follows:

"Section 2(c) 'money circulation scheme' means any scheme, by whatever name called, for the making of quick D or easy money, or for the receipt of any money or valuable thing as the consideration for a promise to pay money, on any event or contingency relative or applicable to the enrolment of members into the scheme, whether or not such money or thing is derived from the entrance money of the member of such scheme or periodical subscription; E

Section 2(e) 'prize chit' includes any transaction or arrangement by whatever name called under which a person collects whether as a promoter, foreman, agent or in any other capacity, moneys in one lump sum or in instalments by way of contributions or subscriptions or by sale of F units, certificates or other instruments or in any other manner or as membership fees or admission fees or service charges to or in respect of any savings, mutual benefits, thrift, or any other scheme or arrangement by whatever name called, and utilises the moneys so collected or any part thereof or the income accruing from investment or G other use of such moneys for all or any of the following purposes, namely:

(i) giving or awarding periodically or otherwise to a specified number of subscribers as determined by lot, draw or in any other manner, prizes or gifts in cash or in kind, H

whether or not the recipient of the prize or gift is under a liability to make any further payment in respect of such scheme or arrangement.

(ii) refunding to the subscribers or such of them as have not won any prize or gift, the whole or part of the subscription, contributions or other moneys collected, with or without any bonus, premium interest or other advantage by whatever name called, on the termination of the scheme or arrangement, or on or after the expiry of the period stipulated therein, but does not include a conventional chit."

The scheme for investment with which the company has been carrying on its business is neither a conventional chit not a 'money circulation scheme'. That is not disputed by the Registrar of Firms. According to him, the scheme is a 'prize chit' as defined under Section 2(e) of the Act. To understand the correct scope of the definition, we must first try to ascertain the purpose of the legislation. The legal interpretation is not an activity *sui generis*. Under the view, now widely held, the purpose of the enactment is the touchstone of interpretation. The first step in interpretation, therefore, is to gather all informations about the purpose of the Act. If the Act was meant for the public good, then every provision thereof must receive fair and liberal construction. It must be construed with vision to ensure the achievement of the object of the Act.

The purpose of the Act could be gathered by having recourse to the Statement of Objects and Reasons accompanying the Bill and in long title of the enactment. The Statement of Objects and Reasons reads as follows:

"In June 1974, the Reserve Bank of India had constituted a Study Group under the Chairmanship of Shri James S. Raj, the then Chairman, Unit Trust of India, for examining in depth the provisions of Chapter III-B of the Reserve Bank of India Act, 1934, and the directions issued thereunder to non-banking companies in order to assess their adequacy in the context of ensuring the efficacy of the monetary and credit policies of the country and affording a degree of protection to the interests of the depositors who place their savings with such companies. In its report submitted to the Reserve Bank in July 1975, the Group ob-

served that the prize chit/benefit/savings schemes benefit primarily the promoters and do not serve any social purpose. On the contrary the Group have stated that they are prejudicial to the public interest and affect the afficacy of the fiscal and monetary policies of the country.

2. Prize chits would cover any kind of arrangement under which moneys are collected by way of subscriptions, contributions etc. and prizes, gifts etc. are awarded. The prize chit is really a form of lottery. Its basic feature is that the foreman or promoter who ostensibly charges no commission collects regular subscriptions from the members. Once the member gets the prize, he is very often not required to pay further instalments and his name is dropped from further lots. The institutions conducting prize chits are private limited companies with a very low capital base contributed by the promoters, directors or their close relatives. Such schemes confer monetary benefit only on a few members and on the promoter companies. The Group had, therefore, recommended that prize chits or money circulation schemes by whatever name called should be totally banned in the larger interests of the public and suitable legislative measures should be undertaken for the purpose.

3. The Bill proposes to implement the above recommendations of the Group by providing for the banning of the promotion or conduct of any prize chit, or money circulation scheme by whatever name called, and of the participation of any person in such chit or scheme. The Bill provides for a period of two years within which the existing units carrying on the business of prize chits or money circulation schemes may be wound up and provides for penalties and other incidental matters. The repeal of the existing State Legislations on the subject has also been provided for in the Bill."

The long title of the Act reads: "An Act to ban the promotion or conduct of prize chits and money circulation scheme and for matters connected therewith or incidental thereto." It will be clear from these recitals that the Parliament intended to ban all prize chits and money circulation scheme. Some of the aspects of the definition of prize chit has been considered by this Court. In *Reserve Bank of India* v. *Peerless*

A *General Insurance and Investment Co. Ltd.,* AIR 1987 SC 1023 O. Chinnappa Reddy, J. speaking for this Court observed (p. 1041):

> "We do not think that by using the word "includes", in the definition in s. 2(e) of the Act the Parliament intended to so expand the meaning of prize chit as to take in
B every scheme involving subscribing and refunding of money. The word "includes", the context shows, was intended not to expand the meaning of "prize chit" but to cover all transactions or arrangements of the nature of prize chits but under different names. The expression "Prize Chit" had no where been statutorily defined before.
C The Bhabatosh Datta Study Group and the Raj Study Group had identified the schemes popularly called "Prize Chits". The Study Group also recognised that "Prize Chits" were also variously called benefit/savings schemes and lucky draws and that the basic common features of the schemes were the giving of a prize and the ultimate refund
D of the amount of subscriptions (vide Para 6.3 of the report of the Raj Study Group). It was recommended that prize chits and the like by whatever name called differently, 'prize chits', 'benefit/savings schemes', 'lucky draws', etc. It became necessary for the Parliament to resort to an inclusive definitions so as to bring in all transactions or
E arrangements containing these two elements. We do not think that in defining the expression 'Prize Chit', the Parliament intended to depart from the meaning which the expression had come to acquire in the world of finance, the meaning which the Datta and the Raj Study Group had given it."

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The learned judge while examining the scope of two clauses (i) and (ii) of sec. 2(e) observed (p. 1042-43):

> "The argument is that the two clauses (i) and (ii) are to be read disjunctively and that they should not be read as
G if they are joined by the conjunction 'and'. We do not agree. There is no need to introduce the word 'or' either. How clauses (i) and (ii) of sec. 2(e) have to be read depends on the context. The context requires the definition to be read as if both clauses have to be satisfied. There is nothing in the text which makes it imperative that it be read
H otherwise. The learned counsel urges that the expression

"all or any of the following purposes" indicates that the purpose may be either the one mentioned in (i) or the one mentioned in (ii). We do not agree with this submission. Each of the clauses (i) and (ii) contains a number of alternatives and it is to those several alternatives that the expression "all or any of the following purposes" refer and not to (i) or (ii) which are not alternatives at all. In fact, a prize chit, by whatever name it may be called, does not contemplate exhaustion of the entire fund by the giving of prizes; it invariably provides for a refund of the amount of subscription, less the deductions, to all the subscribers or to those who have not won prizes, depending on the nature of the scheme. Clauses (i) and (ii) refer to the twin attributes of a prize chit or like scheme and not to two alternative attributes."

In the light of these principles, we may now have a close look at the definition of 'prize chit' under sec. 2(e). We may cull out the following attributes:

There must be collection of moneys from persons. The moneys may be collected in one lumpsum or in instalments. The moneys may be collected by way of contributions, subscriptions or as membership fees, admission fees or service charges. It may be collected by sale of units, certificates or other instruments. The collection may be in respect of any savings, mutual benefits, thrift or any other scheme or arrangement, no matter by what name. The Collection may be made by a promoter, foreman, agent or in any other capacity. The collection of moneys or any part thereof is utilised for all or any of the purposes set out in clauses (i) and (ii). They are the two distinct attributes of prize chit, each of which has to be satisfied. The definition goes a step further. The amount collected as such need not be utilised for any of the purposes under clauses (i) and (ii). It may be sufficient to attract the definition if the amount accrued from investment of such collection is used for all or any of the purposes under clauses (i) and (ii).

Clauses (i) and (ii) provide for giving or awarding prize or gift to subscribers. It may be periodical or otherwise. The prize or gift may be awarded by lot, draw or in any other manner. Then there may be refund of the whole or part of the collection. The refund may be made to all or such of them who have not won any prize or gift. The refund may be made with or without any bonus, premium interest or other advantage.

Leaving aside the verbiage, if we rewrite the definition which reeks of simplicity, it runs like this: Prize chit includes a scheme by which a person in whatever name collects moneys from individuals for the purpose of giving prizes and refunding the balance with or without premium after the expiry of a specified period.

From the above analysis, it will be clear that the reach and range of the definition of 'prize chit' is sweeping. The generality of the language appears to have been deliberately used so that the transaction, arrangement or scheme in which subscribers or contributors agree to forego a portion of their contributions in the hope of getting any prize or gift should not escape from the net of the definition. Even the participation of any person in such chit or scheme has been prohibited. The object being that the people should not be attracted to invest their moneys in the hope of getting prizes or gifts. The reason being that it has been found by the Study Group of Dr. S. Raj that all such prize chits or schemes are in the form of lottery and they do not serve any social purpose. They are prejudicial to the public interest. They affect the monetary policies of the country. They benefit only the promoters.

So much is about the law. Let us now have the fact of the case. The terms and conditions of the scheme offered by the company are as follows:

"1. Secured Investment Company will be known as COMPANY.

2. Every member will deposit with the company Rs.220 ONLY ONCE in return he will get a Reinvestment Deposit Plan Receipt/Bank Cash Certificate (a type of Fixed Deposit receipt) of a Government Nationalised Bank.

3. No interest will be given to the member, thus the maturity value of the Bank's R.D.P. will be Rs.220.

4. After a member deposits Rs.220 he will get his Bank's R.D.P. within 7 days. For members from Lucknow, Kanpur and Bareilly, every effort will be made to give them the R.D.P. Receipt the very next day.

5. The duration of the scheme is for 66 months.

Therefore, the duration of the bank's R.D.P. Receipt is also for 66 months. A

6. Lucky draws for articles totalling Rs.15,000 per month will be given every month for 60 months. Thus the total value of prizes for 60 months will be Rs.9 lakhs. Totally 60 lucky draws will be held, one every month, after the recruitment of 19,999 members per group. B

7. Every month, 21 lucky prizes will be given. The Ist Prize will be a Vijay Scooter, the 2nd Prize will be a Kelvinator refrigerator (10 lts.) or a T.V. and 19 other consolidation prizes consisting of articles like transistor, sewing machine, cycle, pressure cooker, stainless steel thali sets, alarm, clocks, etc. C

8. If there is any price increase, later in the period of the scheme of the value of the prize articles which are detailed below the winning member shall pay for the actual price increase. Cash in lieu of the articles will not be given. D

1.	One Vijay Super Scooter	Rs.8000
2.	One Kelvinator Fridge (10 Its.) or one T.V. Plus one Mixi	Rs.3900 E
3.	One cycle	Rs.400
4.	One table fan	Rs.350
5.	One Sewing Machine	Rs.325
6.	2 Nos. Philips Transistors (Rs. 230 each)	Rs.460
7.	3 Nos. Pressure Cookers (Rs. 175 each)	Rs.525 F
8.	5 Nos. Steel thali sets (Rs. 100 each set)	Rs.500
9.	6 Nos. Alarm Clocks (Rs.90 each)	Rs.540
	TOTAL	Rs. 15,000 G

9. A winning member will be entitled to participate in subsequent draws. Thus a member can win prizes over and over again.

10. If a member withdraws during the duration of the scheme, he can encash his Bank's R.D.P. directly the H

entire amount of Rs.200 but will lose interest for the balance months as per Reserve Bank of India rules governing from time to time. For example, if a member withdraws immediately after he gets his R.D.P. Receipt, he loses up to a maximum of Rs.92. This is the maximum amount a member can lose if he withdraws from the scheme immediately after he becomes a member and after getting his Bank R.D.P. Of course, he will also not be entitled for the balance lucky draws.

11 The reason for deduction of interest is that the company gives these fantastic prizes through the interest thus gained, also this interest gained has to cover the company's overheads and profit. However, a customer's refund of his Rs.220 is 100 per cent secured, because at the end of the scheme he can go directly to the Bank and encash the R.D.P. without any consent from the Company.

12. Out station members can encash the R.D.P. by presenting it to any Bank. The procedure is the same as one normally encashes an outstation cheque.

13. The Company reserves the right to accept or reject any membership without assigning any reasons.

14. In case, the total membership is not fully subscribed to, members can still be scruited after the start of the draws. However, the Company will at no stage keep memberships reserved in its own name, thus winner of every draw will go to an actual member.

15. The lucky draws will take place in rotation at Lucknow, Kanpur and Bareilly on the Ist Sunday of every month. The lucky draws will be taken out by members themselves to ensure fairness and honesty in the draw."

There are as many as 19,999 subscribers in each scheme. All of them do not get prizes and indeed they could not get, since there are only 60 draws with 21 prizes each. The members are not told that the company deducts Rs.92 for its own use. They are only informed that they are assured of the money deposited in the Bank, and in the event of premature withdrawal, they will lose interest upto Rs.92 only.

In spite of all these glaring attributes of exploitive nature of the scheme, the High Court appears to have been carried away with the Reinvestment Deposit Plan Receipt for Rs.220. The High Court was of the view that the scheme could not be considered as "prize chit". The High Court said:

> "It is thus clear from a reading of the document (annexure 1) that the so-called 'member' deposits the amount with the petitioners for the purpose of obtaining a Reinvestment Deposit Plan Receipt, which is promised to him by the petitioners. He may have been having an idea in the background that by depositing the amount of Rs.220 with the petitioners and obtaining the Reinvestment Deposit Plan Receipt, he would also be considered for the distribution of 'Lucky Prizes'. But that is not enough inasmuch as the amount which he had deposited with the petitioners was to be invested in a nationalised bank and he was to get a Reinvestment Deposit Plan Receipt. If the person from whom the money has been collected has not deposited it with the petitioners as "contributions" or "subscription", it is difficult to hold that it is collected by the petitioners as his "contribution or subscription".

The High Court appears to have proceeded on the basis that the members of the scheme do not pay subscription to the company. Nor do they pay the amount as contribution. The High Court was also of the view that payment of money to the company for the purpose of obtaining R.D.P. receipt with the hope of getting any prize is not sufficient to attract the definition of prize chit.

In our view, the conclusion of the High Court is patently erroneous. It is unsustainable both on facts and law. The High Court has failed to consider that the company undisputedly takes away Rs.92 out of Rs.220 paid by each member. The High Court has further failed to note that the company utilises the deducted amount of Rs.92 for the purpose of giving prizes to members. Dr. L.M. Singhvi, learned counsel for the company, did not and indeed could not dispute that the company is deducting Rs.92 out of the payment of Rs.220. The counsel however, urged that since the member gets the full amount of Rs.220 from the bank at the instance of the company, the scheme is an investment scheme and not prize chit. We are unable to accept this submission. The fact that the member receives Rs.220 from the bank after the maturity period of his deposit makes little difference in the nature of

A the transaction of the company. The fact remains that the company collects in one lumpsum Rs.220 from every member. It is only by payment of that amount, the individual becomes a member of the scheme and eligible to get monthly prizes. The company instead of returning the balance of Rs.128 directly to the member takes him to a nearby branch of the nationalised bank. There Rs.128 would be B deposited in the name of the member who gets the same with interest after maturity. But it should not be forgotten that the member does not get back Rs.92 deducted by the company. Nor he gets any interest on this amount. He foregoes his amount of Rs.92 with the hope of getting prizes offered by the company. There is no guarantee that he will get any prize. He, however, takes chance month after month. If he C is unlucky he waits in vain for 60 months. The apparent tenor of the scheme may not bring out the exploitative nature of the scheme. But it is there if anybody wants to know it. The company undisputedly collects Rs.92 from every subscriber and utilises a portion of it for giving prizes and to meet overhead charges. The company in all collects an amount of Rs.18,44,907.75 at the rate of Rs.92 per head from 19,999 D subscribers. The company distributes monthly prizes of the value of Rs.15,000. The total value of all the prizes for 60 months works out to Rs.9 lakhs. The balance of about 9.5 lakhs with interest thereon would be utilised by the company. Is this a promotion of thrift, investment or saving? At whose costs? and for whose benefit?

E We are, however, glad to note that Madhya Pradesh High Court while considering a similar scheme in *Sahara India* v. *State of M.P. & Others,* [1983] M.P. 2 128 has held that it is prize chit falling within the scope of Section 2(e) of the Act.

We have no doubt that the scheme of the company with which we F are concerned is primarily for the benefit of the promoter or the Company at the costs of the subscribers. This is the kind of transactions or arrangements which Dr. J.S. Raj Study Group said that it should be banned altogether. Section 2(e) was intended to cover all such arrangements or schemes. The interpretation given by the Court should not be stultifying the underlying principle in the definition G which was meant to protect people from exploitation. We would like to emphasise that the Act was intended to ban all kinds of prize chits where persons part with their money and risk the chance of getting prizes or gifts. Therefore, any scheme or arrangement in which a person agrees to lose or made to part a portion of his payment against the chance of getting any prize or gift, should be considered as prize H chit falling within the inclusive definition under Section 2(e).

From the above discussion, and in the light of the principles to which we have called attention the scheme of the company is nothing but prize chit as defined under Section 2(e) of the Act and the action of the Registrar of firms deserves to be upheld. A

In the result, we allow the appeal with costs and set aside the judgment and order of the High Court. B

Before parting with the case we may, however, observe that the Registrar of the Firms while taking action against the persons or firms under the Act will take care to see that the members of the scheme are not denied of their contributions or prizes which they are legitimately entitled to, if the *prize chit* is allowed to run for the full term. C

S.L. Appeal allowed.