1957

April 9

R. M. D. CHAMARBAUGWALLA

v.

THE UNION OF INDIA

(with connected petitions)

(S. R. DAS C.J., VENKATARAMA AYYAR, B. P. SINHA, S. K. DAS and P. B. GAJENDRAGADKAR JJ.)

Prize Competition—Definition—Construction—If includes competition other than of a gambling nature—Validity of enactment —Principle of severability—Application—Prize Competitions Act, (42 of 1955), ss. 2(d), 4, 5, rr. 11, 12.

The petitioners, who were promoting and conducting prize competitions in the different States of India, challenged the constitutionality of ss. 4 and 5 of the Prize Competitions Act (42 of 1955) and rr. 11 and 12 framed under s. 20 of the Act. Their contention was that 'prize competition' as defined in s. 2(d) of the Act included not merely competitions that were of a gambling nature but also those in which success depended to a substantial degree on skill and the sections and the rules violated their fundamental right to carry on business, and were unsupportable under Art. 19(6) of the Constitution, that they constituted a single inseverable enactment and, consequently, must fail entirely. On behalf of the Union of India this was controverted and it was contended that the definition, properly construed, meant and included only such competitions as were of a gambling nature, and even if that was not so, the impugned provisions, being severable in their application, were valid as regards gambling competitions.

Held, that the validity of the restrictions imposed by ss. 4 and 5 and rr. 11 and 12 of the Act as regards gambling competitions was no longer open to challenge under Art. 19(6) of the Constitution in view of the decision of this Court that gambling did not fall within the purview of Art. 19(1)(g) of the Constitution.

The State of Bombay v. *R. M. D. Chamarbaugwala,* (1957) S.C.R. 874, followed.

On a proper construction there could be no doubt that the Prize Competitions Act (42 of 1955), in defining the word 'prize competition' as it did in s. 2(d), had in view only such competitions as were of a gambling nature and no others.

In interpreting an enactment the Court should ascertain the intention of the legislature not merely from a literal meaning of the words used but also from such matters as the history of the legislation, its purpose and the mischief it seeks to suppress.

The Bengal Immunity Company Limited v. *The State of Bihar and others,* (1955) 2 S.C.R. 603, referred to.

Even assuming that prize competition as defined by s. 2(d) of the Act included not merely gambling competitions but also others in which success depended to a considerable degree on skill, the restrictions imposed by ss. 4 and 5 and rr. 11 and 12 of the Act were clearly severable in their application to the two distinct and separate categories of competitions and, consequently, could not be void as regards gambling competitions.

The principle of severability is applicable to laws enacted by legislatures with limited powers of legislation, such as those in a Federal Union, which fall partly within and partly outside their legislative competence, where the question arises as to whether the valid can be separated from the invalid parts and that is a question which has to be decided by the Court on a consideration of the entire provisions of the Act. There is, however, no basis for the contention that the principle applies only when the legislature exceeds its powers as regards the subject-matter of legislation and not when it contravenes any constitutional prohibitions.

In re Hindu Women's Rights to Property Act, (1941) F.C.R. 12, *The State of Bombay and another* v. *F. N. Balsara,* (1951) S.C.R. 682, and *The State of Bombay and another* v. *The United Motors (India) Ltd. and others,* (1953) S.C.R. 1069, relied on.

Punjab Province v. *Daulat Singh and others,* (1946) F.C.R. 1, *Romesh Thappar* v. *State of Madras,* (1950) S.C.R. 594 and *Chintaman Rao* v. *State of Madhya Pradesh,* (1950) S.C.R. 759, distinguished.

ORIGINAL JURISDICTION: Writ Petitions Nos. 78-80, 93 and 152 of 1956.

Petitions under Article 32 of the Constitution of India for the enforcement of Fundamental Rights.

Sir N. P. Engineer, N. A. Palkhivala, R. A. Gagrat and *G. Gopalakrishnan,* for the petitioners in Petitions Nos. 78, 79 and 80 of 1956.

Ganpat Rai, for the petitioner in petition No. 93 of 1956.

K. C. Jain and *B. P. Maheshwari,* for the petitioner in Petition No. 152 of 1956.

C. K. Daphtary, Solicitor-General of India, Porus A. Mehta and *R. H. Dhebar,* for the respondent No. 1 in Petitions Nos. 78/56 and 152/56 and Respondents in Petitions Nos. 79, 80 and 93 of 1956.

G. R. Ethirajulu Naidu, Advocate-General, Mysore, Porus A. Mehta and *T. M. Sen,* for respondent No. 2 in Petition No. 78 of 1956.

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April 9. 1957. The Judgment of the Court was delivered by

VENKATARAMA AIYAR J.—Pursuant to resolutions passed by the legislatures of several States under Art. 252, cl. (1) of the Constitution, Parliament enacted Prize Competitions Act, (42 of 1955), hereinafter referred to as the Act, and by a notification issued on March 31, 1956, the Central Government brought it into force on April 1, 1956. The petitioners before us are engaged in promoting and conducting prize competitions in different States of India, and they have filed the present petitions under Art. 32 questioning the validity of some of the provisions of the Act and the rules framed thereunder.

It will be convenient first to refer to the provisions of the Act and of the rules, so far as they are material for the purpose of the present petitions. The object of the legislation is, as stated in the short title and in the preamble, "to provide for the control and regulation of prize competitions". Section 2(d) of the Act defines "prize competition" as meaning "any competition (whether called a cross-word prize competition, a missing-word prize competition, a picture prize competition or by any other name), in which prizes are offered for the solution of any puzzle based upon the building up, arrangement, combination or permutation of letters, words or figures". Sections 4 and 5 of the Act are the provisions which are impugned as unconstitutional, and they are as follows:

4. "No person shall promote or conduct any prize competition or competitions in which the total value of the prize or prizes (whether in cash or otherwise) to be offered in any month exceeds one thousand rupees; and in every prize competition, the number of entries shall not exceed two thousand.

5. Subject to the provisions of section 4, no person shall promote any prize competition or competitions in which the total value of the prize or prizes (whether in cash or otherwise) to be offered in any month does not exceed one thousand rupees unless he has obtained in this behalf a licence granted in

accordance with the provisions of this Act and the rules made thereunder."

Then follow provisions as to licensing, maintaining of accounts and penalties for violation thereof. Section 20 confers power on the State Governments to frame rules for carrying out the purpose of the Act. In exercise of the powers conferred by this section, the Central Government has framed rules for Part C States, and they have been, in general, adopted by all the States. Two of these rules, namely, rules 11 and 12 are impugned by the petitioners as unconstitutional, and they are as follows:

11. "*Entry fee*—(1) Where an entry fee is charged in respect of a prize competition, such fee shall be paid in money only and not in any other manner.

(2) The maximum amount of an entry fee shall not exceed Re. 1 where the total value of the prize or prizes to be offered is rupees one thousand but not less than rupees five hundred; and in all other cases the maximum amount of an entry fee shall be at the following rates, namely—

(a) as. 8 where the total value of the prize or prizes to be offered is less than rupees five hundred but not less than rupees two hundred and fifty; and

(b) as. 4 where the total value of the prize or prizes to be offered is less than rupees two hundred and fifty.

12. *Maintenance of Register.*—Every licensee shall maintain in respect of each prize competition for which a licence has been granted a register in Form C and shall, for the purpose of ensuring that not more than two thousand entries are received for scrutiny for each such competition, take the following steps, that is to say, shall—

(a) arrange to receive all the entries only at the place of business mentioned in the license;

(b) serially number the entries according to their order of receipt;

(c) post the relevant particulars of such entries in the register in Form C as and when the entries are received and in any case not later than the close of business on each day; and

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(d) accept for scrutiny only the first two thousand entries as they appear in the register in Form C and ignore the remaining entries, if any, in cases where no entry fee is charged and refund the entry fee received in respect of the entries in excess of the first two thousand to the respective senders thereof in cases where an entry fee has been charged after deducting the cost (if any) of refund."

Now, the contention of Mr. Palkhiwala, who addressed the main argument in support of the petitions, is that prize competition as defined in s. 2(d) would include not only competitions in which success depends on chance but also those in which it would depend to a substantial degree on skill; that the conditions laid down in ss. 4 and 5 and rr. 11 and 12 are wholly unworkable and would render it impossible to run the competition, and that they seriously encroached on the fundamental right of the petitioners to carry on business; that they could not be supported under Art. 19(6) of the Constitution as they were unreasonable and amounted, in effect, to a prohibition and not merely a regulation of the business; that even if the provisions could be regarded as reasonable restrictions as regards competitions which are in the nature of gambling, they could not be supported as regards competitions wherein success depended to a substantial extent on skill, and that as the impugned law constituted a single inseverable enactment, it must fail in its entirety in respect of both classes of competitions. Mr. Seervai who appeared for the respondent, disputes the correctness of these contentions. He argues that 'prize competition' as defined in s. 2(d) of the Act, properly construed, means and includes only competitions in which success does not depend to any substantial degree on skill and are essentially gambling in their character; that gambling activities are not trade or business within the meaning of that expression in Art. 19(1)(g), and that accordingly the petitioners are not entitled to invoke the protection of Art. 19(6); and that even if the definition of 'prize competition' in s. 2(d) is wide enough to include competitions in which success depends to a substantial degree on skill and ss. 4 and 5

of the Act and rr. 11 and 12 are to be struck down in respect of such competition as unreasonable restrictions not protected by Art. 19(6), that would not affect the validity of the enactment as regards the competitions which are in the nature of gambling, the Act being severable in its application to such competitions.

These petitions were heard along with Civil Appeal No. 134 of 1956, wherein the validity of the Bombay Lotteries and Prize Competitions Control and Tax Act, 1948 was impugned on grounds some of which are raised in the present petitions. In our judgment in that appeal, we have held that trade and commerce protected by Art. 19(1)(g) and Art. 301 are only those activities which could be regarded as lawful trading activities, that gambling is not trade but *res extra commercium,* and that it does not fall within the purview of those Articles. Following that decision, we must hold that as regards gambling competitions, the petitioners before us cannot seek the protection of Art. 19(1)(g), and that the question whether the restrictions enacted in ss. 4 and 5 and rr. 11 and 12 are reasonable and in the interest of the public within Art. 19(6) does not therefore arise for consideration.

As regards competitions which involve substantial skill, however, different considerations arise. They are business activities, the protection of which is guaranteed by Art. 19(1)(g), and the question would have to be determined with reference to those competitions whether ss. 4 and 5 and rr. 11 and 12 are reasonable restrictions enacted in public interest. But Mr. Seervai has fairly conceded before us that on the materials on record in these proceedings, he could not maintain that the restrictions contained in those provisions are saved by Art. 19(6) as being reasonable and in the public interest. The ground being thus cleared, the only questions that survive for our decision are (1) whether, on the definition of 'prize competition' in s. 2(d), the Act applies to competitions which involve substantial skill and are not in the nature of gambling; and (2) if it does, whether the provisions of ss. 4 and 5 and rr. 11 and 12 which are, *ex concessi* void, as regards such competitions, can on the principle of severability

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be enforced against competitions which are in the nature of gambling.

1. If the question whether the Act applies also to prize competitions in which success depends to a substantial degree on skill is to be answered solely on a literal construction of s. 2(d), it will be difficult to resist the contention of the petitioners that it does. The definition of 'prize competition' in s. 2(d) is wide and unqualified in its terms. There is nothing in the wording of it, which limits it to competitions in which success does not depend to any substantial extent on skill but on chance. It is argued by Mr. Palkhiwala that the language of the enactment being clear and unambiguous, it is not open to us to read into it a limitation which is not there, by reference to other and extraneous, considerations. Now, when a question arises as to the interpretation to be put on an enactment, what the court has to do is to ascertain "the intent of them that make it", and that must of course be gathered from the words actually used in the statute. That, however, does not mean that the decision should rest on a literal interpretation of the words used in disregard of all other materials. "The literal construction then", says Maxwell on Interpretation of Statutes, 10th Edn., p. 19, "has, in general, but *prima facie* preference. To arrive at the real meaning, it is always necessary to get an exact conception of the aim, scope and object of the whole Act; to consider, according to Lord Coke: 1. What was the law before the Act was passed; (2) What was the mischief or defect for which the law had not provided; (3) What remedy Parliament has appointed; and (4). The reason of the remedy". The reference here is to *Heydon's case*(1). These are principles well settled, and were applied by this Court in *The Bengal Immunity Company Limited* v. *The State of Bihar and others*(2). To decide the true scope of the present Act, therefore, we must have regard to all such factors as can legitimately be taken into account in ascertaining the intention of the legislature, such as the history of the legislation and the purposes thereof, the mischief which it intended to

(1) (1584) 3 W. Rep. 16; 76 E.R. 637. (2) (1955) 2 S.C.R. 603, 633

suppress and the other provisions of the statute, and construe the language of s. 2(d) in the light of the indications furnished by them.

Turning first to the history of the legislation, its genesis is to be found in the Bombay Lotteries and Prize Competitions Control and Tax Act (Bom. LIV of 1948). That Act was passed with the object of controlling and taxing lotteries and prize competitions within the Province of Bombay, and as originally enacted, it applied only to competitions conducted within the Province of Bombay. Section 7 of the Act provided that "a prize competition shall be deemed to be an unlawful prize competition unless a licence in respect of such competition has been obtained by the promoter thereof." Section 12 imposed a tax on the amounts received in respect of competitions which had been licensed under the Act. With a view to avoid the operation of the taxing provisions of this enactment, persons who had theretobefore been conducting prize competitions within the Province of Bombay shifted the venue of their activities to neighbouring States like Mysore, and from there continued to receive entries and remittances of money therefor from the residents of Bombay State. In order to prevent evasion of the Act and for effectually carrying out its object, the legislature of Bombay passed Act XXX of 1952 extending the provisions of the Act of 1948 to competitions conducted outside the State of Bombay but operating inside it, the tax however being limited to the amounts remitted or due on the entries sent from the State of Bombay. The validity of this enactment was impugned by a number of promoters of prize competitions in proceedings by way of writ in the High Court of Bombay, and dealing with the contentions raised by them, Chagla C.J. and Dixit J. who heard the appeals arising from those proceedings, held that the competitions in question were gambling in character, and that the licensing provisions were accordingly valid, but that the taxes imposed by ss. 12 and 12-A of the Act were really taxes on the carrying on of the business of running prize competitions, and were hit by Art. 301 of the Constitution, and were therefore bad. It is

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against this decision that Civil Appeal No. 134 of 1956, already referred to, was directed.

The position created by this judgment was that though the States could regulate the business of running competitions within their respective borders, to the extent that it had ramifications in other States they could deal with it effectively only by joint and concerted action among themselves. That precisely is the situation for which Art. 252(1) provides. Accordingly, following on the judgment of the Bombay High Court, the States of Andhra, Bombay, Madras, Orissa, Uttar Pradesh, Hyderabad, Madhya Bharat, Patiala and East Punjab States Union and Saurashtra passed resolutions under Art. 252(1) of the Constitution authorising Parliament to enact the requisite legislation for the control and regulation of prize competitions. Typical of such resolutions is the one passed by the legislature of Bombay, which is in these terms :

"This Assembly do resolve that it is desirable that control and regulation of prize puzzle competitions and all other matters consequential and incidental thereto in so far as these matters are concerned with respect to which Parliament has no power to make laws for the States, should be regulated by Parliament by law." It was to give effect to these resolutions that Parliament passed the Act now under consideration, and that fact is recited in the preamble to the Act.

Having regard to the circumstances under which the resolutions came to be passed, there cannot be any reasonable doubt that the law which the State legislatures moved Parliament to enact under Art. 252(1) was one to control and regulate prize competitions of a gambling character. Competitions in which success depended substantially on skill could not have been in the minds of the legislatures which passed those resolutions. Those competitions had not been the subject of any controversy in court. They had done no harm to the public and had presented no problems to the States, and at no time had there been any legislation directed to regulating them. And if the State legislatures felt that there was any need to regulate even those competitions, they could have themselves effectively done

so withut resort to the special jurisdiction under Art. 252(1). It should further be observed that the language of the resolutions is that it is desirable to control competitions. If it was intended that Parliament should legislate also on competitions involving skill, the word 'control' would seem to be not appropriate. While control and regulation would be requisite in the case of gambling, mere regulation would have been sufficient as regards competitions involving skill. The use of the word 'control' which is to be found not only in the resolution but also in the short title and the preamble to the Act appears to us to clearly indicate that it was only competitions of the character dealt with in the Bombay judgment, that were within the contemplation of the legislature.

Our attention was invited by Mr. Seervai to the statement of objects and reasons in the Bill introducing the enactment. It is therein stated that the proposed legislation falls under Entry 34 of the State List, viz., "Betting and gambling". If we could legitimately rely on this, that would be conclusive against the petitioners. But Mr. Palkhiwala contends, and rightly, that the Parliamentary history of the enactment is not admissible to construe its meaning, and Mr. Seervai also disclaims any intention on his part to use the statement of objects and reasons to explain s. 2(d). We must accordingly exclude it from our consideration. But even apart from it, having regard to the history of the legislation, the declared object thereof and the wording of the statute, we are of opinion that the competitions which are sought to be controlled and regulated by the Act are only those competitions in which success does not depend to any substantial degree on skill.

(2) Assuming, however, that prize competitions as defined in s. 2(d) include those in which success depends to a substantial degree on skill as well as those in which it does not so depend, the question then arises for determination whether ss. 4 and 5 of the Act and rr. 11 and 12 are void not merely in their application to the former—as to which there is no dispute—, but also the latter. Mr. Palkhiwala contends that they are, because, he argues, the rules as to severability of

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statutes can apply only when the impugned legislation is in excess of legislative competence as regards subject-matter and not when it is in violation of constitutional prohibitions, and further because the impugned provisions are one and indivisible. On the other hand, Mr. Seervai for the respondent contends that the principle of severability is applicable when a statute is partially void for whatever reason that might be, and that the impugned provisions are severable and therefore enforceable as against competitions which are of a gambling character. It is on the correctness of these contentions that we have to pronounce.

The question whether a statute which is void in part is to be treated as void *in toto,* or whether it is capable of enforcement as to that part which is valid is one which can arise only with reference to laws enacted by bodies which do not possess unlimited powers of legislation, as, for example, the legislatures in a Federal Union. The limitation on their powers may be of two kinds: It may be with reference to the subject-matter on which they could legislate, as, for example, the topics enumerated in the Lists in the Seventh Schedule in the Indian Constitution, ss. 91 and 92 of the Canadian Constitution, and s. 51 of the Australian Constitution; or it may be with reference to the character of the legislation which they could enact in respect of subjects assigned to them, as for example, in relation to the fundamental rights guaranted in Part III of the Constitution and similar constitutionally protected rights in the American and other Constitutions. When a legislature, whose authority is subject to limitations aforesaid enacts a law which is wholly in excess of its powers, it is entirely void and must be completely ignored. But where the legislation falls in part within the area allotted to it and in part outside it, it is undoubtedly void as to the latter; but does it on that account become necessarily void in its entirety? The answer to this question must depend on whether what is valid could be separated from what is invalid, and that is a question which has to be decided by the court on a consideration of the provisions of the Act. This is a principle well

established in American Jurisprudence, Vide Cooley's Constitutional Limitations, Vol. I, Chap. VII, Crawford on Statutory Construction, Chap. 16 and Sutherland on Statutory Construction, 3rd Edn, Vol. 2, Chap. 24. It has also been applied by the Privy Council in deciding on the validity of laws enacted by the legislatures of Australia and Canada, Vide *Attorney-General for the Commonwealth of Australia* v. *Colonial Sugar Refining Company Limited*(1) and *Attorney-General for Alberta* v. *Attorney-General for Canada* (2). It was approved by the Federal Court in *In re Hindu Women's Rights to Property Act*(3) and adopted by this Court in *The State of Bombay and another* v. *F. N. Balsara*(4) and *The State of Bombay* v. *The United Motors (India) Ltd., and others*(5). These decisions are relied on by Mr. Seervai as being decisive in his favour. Mr. Palkhiwala disputes this position, and maintains that on the decision of the Privy Council in *Punjab Province* v. *Daulat Singh and other*(6) and of the decisions of this court in *Romesh Thappar* v. *State of Madras*(7) and *Chintaman Rao* v. *State of Madhya Pradesh*(8), the question must be answered in his favour. We must now examine the precise scope of these decisions.

In *In re Hindu Women's Rights to Property Act*(3), the question arose with reference to the Hindu Women's Rights to Property Act XVIII of 1937 That was an Act passed by the Central Legislautre, and had conferred on Hindu widows certain rights over properties which devolved by intestate succession and survivorship. While the subject of devolution was within the competence of the Centre under Entry 7 in List III, that was limited to property other than agricultural land, which was a subject within the exclusive competence of the Provinces under Entry 21 in List II. Act No. XVIII of 1937 dealt generally with property, and the contention raised was that being admittedly incompetent and *ultra vires* as regards agricultural lands, it was void in its entirety.

(1) [1914] A. C. 237.
(2) L. R. [1947] A. C. 503.
(3) [1941] F. C. R. 12.
(4) [1951] S. C. R. 682.
(5) [1953] S. C. R. 1069.
(6) [1946] F. C. R. 1.
(7) [1950] S. C. R. 954.
(8) [1950] S. C. R. 759.

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It was held by the Federal Court that the Central Legislature must, on the principle laid down in *Macleod* v. *Attorney-General for New South Wales*(1), be presumed to have known its own limitations and must be held to have intended to enact only laws within its competence, that accordingly the word 'property' in Act No. XVIII of 1937 must be construed as property other than agricultural land, and that, in that view, the legislation was wholly *intra vires*. It is contended by Mr. Palkhiwala that this decision does not proceed on the basis that the Act is in part *ultra vires* and that the remainder however could be separated therefrom, but on the footing that the Act is in its entirety *intra vires,* and that thus, no question of severability was decided. That is true; but that the principle of severability had the approval of that Court clearly appears from the following observations of Sir Maurice Gwyer C. J.:

"It should not however be thought that the Court has overlooked cases cited to it in which the same words have been applied in an Act to a number of purposes, some within and some without the power of the Legislature, and the whole Act has been held to be bad. If the restriction of the general words to purposes within the power of the Legislature would be to leave an Act with nothing or next to nothing in it, or an Act different in kind, and not merely in degree, from an Act in which the general words were given the wider meaning, then it is plain that the Act as a whole must be held invalid, because in such circumstances it is impossible to assert with any confidence that the Legislature intended the general words which it has used to be construed only in the narrower sense. If the Act is to be upheld, it must remain, even when a narrower meaning is given to the general words, 'an Act which is complete, intelligible and valid and which can be executed by itself;' 'Wynes: Legislative and Executive Powers in Australia, p. 51, citing *Presser* v. *Illinois*(2)."

There is nothing in these observations to support the contention of the petitioners that the doctrine of

(1) [1891] A. C. 455. (2) (1886) 116 U. S. 252.

severability applies only when the legislation is in excess of the competence of the legislature *quoad* its subject-matter, and not when it infringes some constitutional prohibitions.

In *The State of Bombay and another* v. *F. N. Balsara*(1) the question was as to the validity of the Bombay Prohibition Act. Sections 12 and 13 of the Act imposed restrictions on the possession, consumption and sale of liquor, which had been defined in s. 2(24) of the Act as including "(a) spirits of wine, methylated spirits, wine, beer, toddy and all liquids consisting of or containing alcohol, and (b) any other intoxicating substance which the Provincial Government may, by notification in the Official Gazette, declare to be liquor for the purposes of this Act". Certain medicinal and toilet preparations had been declared liquor by notification issued by the Government under s. 2(24)(b). The Act was attacked in its entirety as violative of the rights protected by Art. 19(1)(f); but this Court held that the impugned provisions were unreasonable and therefore void in so far as medicinal and toilet preparations were concerned, but valid as to the rest. Then, the contention was raised that "as the law purports to authorise the imposition of a restriction on a fundamental right in language wide enough to cover restrictions both within and without the limits of constitutionally permissible legislative action affecting such right, it is not possible to uphold it even so far as it may be applied within the constitutional limits, as it is not severable". In rejecting this contention, the Court observed (at pp. 717-718) :

"These items being thus treated separately by the legislature itself and *being severable,* and it not being contended, in view of the directive principles of State policy regarding prohibition, that the restrictions imposed upon the right to possess or sell or buy or consume or use those categories of properties are unreasonable, the impugned sections must be held valid so far as these categories are concerned."

This decision is clear authority that the principle of severability is applicable even when the partial

(1) [1951] S. C. R. 682.

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invalidity of the Act arises by reason of its contravention of constitutional limitations. It is argued for the petitioners that in that case the legislature had through the rules framed under the statute classified medicinal and toilet preparations as a separate category, and had thus evinced an intention to treat them as severable, that no similar classification had been made in the present Act, and that therefore the decision in question does not help the respondent. But this is to take too narrow a view of the decision. The doctrine of severability rests, as will presently be shown, on a presumed intention of the legislature that if a part of a statute turns out to be void, that should not affect the validity of the rest of it, and that that intention is to be ascertained from the terms of the statute. It is the true nature of the subject-matter of the legislation that is the determining factor, and while a classification made in the statute might go far to support a conclusion in favour of severability, the absence of it does not necessarily preclude it. It is a feature usual in latter-day legislation in America to enact a clause that the invalidity of any part of the law shall not render the rest of it void, and it has been held that such a clause furnishes only *prima facie* evidence of severability, which must in the last resort be decided on an examination of the provisions of the statute. In discussing the effect of a severability clause, Brandies J. observed in *Dorchy* v. *State of Kansas*(1) that it "provides a rule of construction, which may sometimes aid in determining that intent. But it is an aid merely; not an inexorable command". The weight to be attached to a classification of subjects made in the statute itself cannot, in our opinion, be greater than that of a severability clause. If the decision in *The State of Bombay and another* v. *F. N. Balsara*(2) is examined in the light of the above discussion, it will be seen that while there is a reference in the judgment to the fact that medicinal and toilet preparations are treated separately by the legislature, that is followed by an independent finding that they are severable. In other words, the decision as to severability was reached on

(1) [1924] 264 U. S. 286; 68 L. Ed. 686, 690. (2) [1951] S. C. R. 682.

the separability in fact of the subjects dealt with by the legislation and the classification made in the rules merely furnished support to it.

Then, there are the observations of Patanjali Sastri C.J. in *The State of Bombay* v. *The United Motors (India) Ltd.*(1). Dealing with the contention that a law authorising the imposition of a tax on sales must be declared to be wholly void because it was bad in part as transgressing constitutional limits, the learned Chief Justice observed (at p. 1099) :

"It is a sound rule to extend severability to include separability in enforcement in such cases, and we are of opinion that the principle should be applied in dealing with taxing statutes in this country."

The petitioners contend that the rule of severability in enforcement laid down in the above passage, following the decision in *Bowman* v. *Continental Co.*(2) is confined in American law to taxing statutes, that it is really in the nature of an exception to the rule against severability of laws which are partially unconstitutional, and that it has no application to the present statute. We are unable to find anv basis for this argument in the American authorities. That the decision in *Bowman's case*(2) related to a taxing statute is no ground for limiting the principle enunciated therein to taxing statutes. On the other hand, the discussion of the law as to severability in the authoritative text-books shows that no distinction is made in American Jurisprudence between taxing statutes and other statutes. Corpus Juris Secundum, Vol. 82, dealing with the subject of severability, states first the principles applicable generally and to all statutes, and then proceeds to consider those principles with reference to different topics, and taxation laws from one of those topics.

We have now to consider the decisions in *Punjab Province* v. *Daulat Singh and others*(3), *Romesh Thappar* v. *State of Madras*(4) and *Chintaman Rao* v. *State of Madhya Pradesh*(5) relied on by the petitioners. In *Punjab Province* v. *Daulat Singh and others*(3), the

(1) [1953] S. C. R. 1069 at 1098-99.
(2) [1921] 256 U. S. 642; 65 L. Ed. 1137.
(3) [1946] F. C. R. 1.
(4) 1950 S. C. R. 594.
(5) [1950] S. C. R. 759.

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challenge was on the validity of s. 13A which had been introduced into the Punjab Alienation of Land Act XIII of 1900 by an Amendment Act X of 1938. That section enacted that an alienation of land by a member of an agricultural tribe in Punjab in favour of another member of the tribe made either before or after the commencement of the amendment Act was void for all purposes, when the real beneficiary under the transaction was not a member of the tribe. Section 4 of the Act had empowered the local Government to determine by notification the body or group of persons who are to be declared to be agricultural tribes for the purpose of the Act. A notification dated April 18, 1904 issued under that section provided that,

"In each district of the Punjab mentioned in column 1 of the Schedule attached to this notification, all persons either holding land or ordinarily residing in such district *and* belonging to any one of the tribes mentioned opposite the name of such district, in column 2, shall be deemed to be an agricultural tribe' within the district".

The question was whether s. 13A was void as contravening s. 298(1) of the Government of India Act, 1935, which provided *inter alia* that no subject of His Majesty domiciled in India shall on grounds only of descent be prohibited from acquiring, holding or disposing of property. It was held by the Federal Court that s. 13A was void as infringing s. 298(1) to the extent that it prohibited alienation on ground of descent, but that it was valid in so far as it related to a prohibition of the transaction in favour of a person who belonged to the tribe but did not hold land or ordinarily reside in the district, as a prohibition on that ground was not within s. 298(1) and that accordingly an enquiry should be made as to the validity of the impugned alienation with reference to the qualifications of the alienee. (Vide *Punjab Province* v. *Daulat Singh*(1).

Before the Privy Council, Mr. Pritt, counsel for the appellant, "conceded that membership of a tribe was generally a question of descent", and the Board accordingly held that s. 13A was repugnant to s. 298(1)

(1) [1942] F. C. R. 67.

and was void. Dealing next with the enquiry which was directed by the Federal Court as to the qualifications of the alienee, the Privy Council observed as follows (at p. 20) :

"The majority of the Federal Court appear to have contemplated another form of severability, namely, by a classification of the particular cases on which the impugned Act may happen to operate, involving an inquiry into the circumstances of each individual case. There are no words in the Act capable of being so construed, and such a course would in effect involve an amendment of the Act by the court, a course which is beyond the competency of the court, as has long been well established."

It will be noticed that, in the above case, there was no question of the application of the Act to different categories which were distinct and severable either in fact or under the provisions of the Act. The notification issued under s. 4 on which the judgment of the Federal Court was based did not classify those who did not belong to the tribe and those who did not hold property or reside in the district as two distinct groups. It described only one category, and that had to satisfy both the conditions. To break up that category into two distinct groups was to go against the express language of the enactment and to substitute the word "or" for "and". The Privy Council held that could not be done, and it also observed that the severability contemplated in the judgment of the Federal Court was an *ad hoc* determination with reference to qualifications of each alienee as distinguished from a distinct category with reference to the subject-matter. This is not an authority for the position that if the subject-matter of what is valid is severable from that of what is invalid, even then, the Act must be held to be wholly void. More to the point are the following observations (at pp. 19-20) on a question which was also raised in that case whether s. 13A which avoided the alienations made both before and after the Act, having been held to be void in so far as it was retrospective, was void *in toto* :

"....If the retrospective element were not severable from the rest of the provisions, it is established beyond

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controversy that the whole Act would have to be declared ultra vires and void. But, happily, the retrospective element in the impugned Act is easily severable, and by the deletion of the words 'either before or' from the early part of sub-s. (1) of the new s. 13A, enacted by s. 5 of the impugned Act, the rest of the provisions of the impugned Act may be left to operate validly."

Discussing this decision in *The State of Bombay* v. *The United Motors (India) Ltd.*(1) Patanjali Sastri C.J. observed (at p. 1098):

"The subject of the constitutional prohibition was single and indivisible, namely, disposition of property on grounds only of (among other things) descent and if, in its actual operation, the impugned statute was found to transgress the constitutional mandate, the whole Act had to be held void as the words used covered both what was constitutionally permissible and what was not."

That is to say, the notification issued under s. 4 was single and indivisible, and therefore it was not severable. Agreeing with this opinion, we are of opinion that the decision in *Punjab Province* v. *Daulat Singh*(2) cannot, in view of the decision of this Court in *The State of Bombay* v. *F. N. Balsara*(3), be accepted as authority for the position that there could be no severability, even if the subject-matters are, in fact, distinct and severable.

In *Romesh Thappar* v. *State of Madras*(4), the question was as to the validity of s. 9 (1-A) of the Madras Maintenance of Public Order Act XXIII of 1949. That section authorised the Provincial Government to prohibit the entry and circulation within the State of a newspaper "for the purpose of securing the public safety or the maintenance of public order". Subsequent to the enactment of this statute, the Constitution came into force, and the validity of the impugned provision depended on whether it was protected by Art. 19(2) which saved "existing law in so far as it relates to any matter which undermines the security

(1) [1953] S. C. R. 1069.
(2) [1946] I.F. C. R. 1.
(3) [1951[S.C.R. 682.
(4 [1950] S.C.R. 594.

of or tends to overthrow the State." It was held by this Court that as the purposes mentioned in s. 9(1-A) of the Madras Act were wider in amplitude than those specified in Art. 19(2), and as it was not possible to split up s. 9(1-A) into what was within and what was without the protection of Art. 19(2), the provision must fail in its entirety. That is really a decision that the impugned provision was on its own contents inseverable. It is not an authority for the position that even when a provision is severable, it must be struck down on the ground that the principle of severability is inadmissible when the invalidity of a statute arises by reason if its contravening constitutional prohibitions. It should be mentioned that the decision in *Romesh Thappar* v. *State of Madras*(1) was referred to in *The State of Bombay* v. *F. N. Balsara*(2) and *The State of Bombay* v. *The United Motors (India) Ltd.*(3) and distinguished.

In *Chintaman Rao* v. *State of Madhya Pradesh* (4), the question related to the constitutionality of s. 4(2) of the Central Provinces and Berar Regulation of Manufacturers of Bidis (Agricultural Purposes) Act No. LXIV of 1948, which provided that, "No person residing in a village specified in such order shall during the agricultural season engage himself in the manufacture of bidis, and no manufacturer shall during the said season employ any person for the manufacture of bidis". This Court held that the restrictions imposed by s. 4(2) were in excess of what was requisite for achieving the purpose of the Act, which was "to provide measures for the supply of adequate labour for agricultural purposes in bidi manufacturing areas", that that purpose could have been achieved by limiting the restrictions to agricultural labour and to defined hours, and that, as it stood, the impugned provision could not be upheld as a reasonable restriction within Art. 19(1) (g). Dealing next with the question of severability, the Court observed (at p. 765) that,

"The law even to the extent that it could be said to authorise the imposition of restrictions in regard to

(1) [1950] S. C. R. 594.
(2) [1951] S. C. R. 682.
(3) [1953] S. C. R. 1069.
(4) [1950] S. C. R. 759.

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agricultural labour cannot be held valid because the language employed is wide enough to cover restrictions both within and without the limits of constitutionally permissible legislative action affecting the right."

Now, it should be noted that the impugned provision, s. 4(2), is by its very nature inseverable, and it could not be enforced without re-writing it. The observation aforesaid must be read in the context of the particular provision which was under consideration. This really is nothing more than a decision on the severability of the particular provision which was impugned therein, and it is open to the same comment as the decision in *Romesh Thappar* v. *State of Madras*(1). That was also one of the decisions distinguished in *The State of Bombay* v. *F. N. Balsara*(2). The resulting position may thus be stated: When a statute is in part void, it will be enforced as regards the rest, if that is severable from what is invalid. It is immaterial for the purpose of this rule whether the invalidity of the statute arises by reason of its subject-matter being outside the competence of the legislature or by reason of its provisions contravening constitutional prohibitions.

That being the position in law, it is now necessary to consider whether the impugned provisions are severable in their application to competitions of a gambling character, assuming of course that the definition of 'prize competition' in s. 2(d) is wide enough to include also competitions involving skill to a substantial degree. It will be useful for the determination of this question to refer to certain rules of construction laid down by the American Courts, where the question of severability has been the subject of consideration in numerous authorities. They may be summarised as follows:

1. In determining whether the valid parts of a statute are separable from the invalid parts thereof, it is the intention of the legislature that is the determining factor. The test to be applied is whether the legislature would have enacted the valid part if it had known that the rest of the statute was invalid. Vide Corpus Juris Secundum, Vol. 82, p. 156; Sutherland on Statutory Construction, Vol. 2, pp. 176-177.

(1) [1950] S. C. R. 594. (2) [1951] S. C. R. 682.

2. If the valid and invalid provisions are so inextricably mixed up that they cannot be separated from one another, then the invalidity of a portion must result in the invalidity of the Act in its entirety. On the other hand, if they are so distinct and separate that after striking out what is invalid, what remains is in itself a complete code independent of the rest, then it will be upheld notwithstanding that the rest has become unenforceable. Vide Cooley's Constitutional Limitations, Vol. 1 at pp. 360-361; Crawford on Statutory Construction, pp. 217-218.

3. Even when the provisions which are valid are distinct and separate from those which are invalid, if they all form part of a single scheme which is intended to be operative as a whole, then also the invalidity of a part will result in the failure of the whole. Vide Crawford on Statutory Construction, pp. 218-219.

4. Likewise, when the valid and invalid parts of a statute are independent and do not form part of a scheme but what is left after omitting the invalid portion is so thin and truncated as to be in substance different from what it was when it emerged out of the legislature, then also it will be rejected in its entirety.

5. The separability of the valid and invalid provisions of a statute does not depend on whether the law is enacted in the same section or different sections; (Vide Cooley's Constitutional Limitations, Vol. 1, pp. 361-362); it is not the form, but the substance of the matter that is material, and that has to be ascertained on an examination of the Act as a whole and of the setting of the relevant provisions therein.

6. If after the invalid portion is expunged from the statute what remains cannot be enforced without making alterations and modifications therein, then the whole of it must be struck down as void, as otherwise it will amount to judicial legislation. Vide Sutherland on Statutory Construction, Vol. 2, p. 194.

7. In determining the legislative intent on the question of separability, it will be legitimate to take into account the history of the legislation, its object,

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the title and the preamble to it. Vide Sutherland on Statutory Construction, Vol. 2, pp. 177-178.

Applying these principles to the present Act, it will not be questioned that competitions in which success depends to a substantial extent on skill and competitions in which it does not so depend, form two distinct and separate categories. The difference between the two classes of competitions is as clear-cut as that between commercial and wagering contracts. On the facts, there might be difficulty in deciding whether a given competition falls within one category or not; but when its true character is determined, it must fall either under the one or the other. The distinction between the two classes of competitions has long been recognised in the legislative practice of both the United Kingdom and this country, and the courts have, time and again, pointed out the characteristic features which differentiate them. And if we are now to ask ourselves the question, would Parliament have enacted the law in question if it had known that it would fail as regards competitions involving skill, there can be no doubt, having regard to the history of the legislation, as to what our answer would be. Nor does the restriction of the impugned provisions to competitions of a gambling character affect either the texture or the colour of the Act; nor do the provisions require to be touched and re-written before they could be applied to them. They will squarely apply to them on their own terms and in their true spirit, and form a code complete in themselves with reference to the subject. The conclusion is therefore inescapable that the impugned provisions, assuming that they apply by virtue of the definition in s. 2(d) to all kinds of competitions, are severable in their application to competitions in which success does not depend to any substantial extent on skill.

In the result, both the contentions must be found against the petitioners, and these petitions must be dismissed with costs. There will be only one set of counsel's fee.

Petitions dismissed.

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