Dr. K.R. Lakshmanan vs State Of Tamil Nadu And Anr on 12 January, 1996

Equivalent citations: 1996 AIR 1153, 1996 SCC (2) 226, AIR 1996 SUPREME COURT 1153, 1996 (2) SCC 226, 1996 AIR SCW 713, 1996 CRIAPPR(SC) 128, 1996 (2) COM LJ 20 SC, 1996 (1) SCR 395, (1996) 1 ALLCRILR 367, (1997) 223 ITR 601, (1996) 1 RECCRIR 468, (1996) 2 SCJ 10, (1996) 86 COMCAS 66, (1996) 2 BOM CR 666, (1996) 1 SCR 395 (SC), 1996 CRI. L. J. 1635, (1996) 1 JT 173 (SC), (1996) 2 COMLJ 20

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Bench: Kuldip Singh, B.L Hansaria, S.B Majmudar

PETITIONER:
DR. K.R. LAKSHMANAN

Vs.

RESPONDENT:
STATE OF TAMIL NADU AND ANR.

DATE OF JUDGMENT: 12/01/1996

BENCH:
KULDIP SINGH (J)
BENCH:
KULDIP SINGH (J)
HANSARIA B.L. (J)
MAJMUDAR S.B. (J)

CITATION:
1996 AIR 1153 1996 SCC (2) 226
JT 1996 (1) 173 1996 SCALE (1)208

ACT:

HEADNOTE:

JUDGMENT:

WITH [W.P(C) Nos.726, 1361 of 1986, 1053/87, 1028/86, 666/86, 1067/86, 1491/86, 923/86, I.A.3/92 in W.P(C) No.857/86, C.A.1715/75, CMP No.21945/86, 14162/86, 20859 & 24540 of 1986]
J U D G M E N T Kuldip Singh, J.

The Madras Race Club (the club) is an Association registered as a company with limited liability under the Companies Act, 1956. The club was formed in the year 1896 by taking over the assets and liabilities of the erstwhile unincorporated club known as Madras Race Club. According to its Memorandum and Articles of Association, the principal object of the club is to carry on the business of a race club in the running of horse races. The club is one of the five "Turf Authorities of India", the other four being the Royal Calcutta Turf Club, the Royal Western India Turf Club Limited, the Bangalore Turf Club LImited and the Hyderabad Race Club. Race meetings are held in the club's own race course at Madras and at Uthagamandalam (Ooty) for which bets are made inside the race course premises. While horse races are continuing in the rest of the country, the Tamil Nadu Legislature, as back as 1949, enacted law by which horse racing was brought within the definiting of "gaming". The said law, however, was not enforced till 1975, when it was challenged by the club by way of a writ petition before the Madras High Court. The write petition was dismissed by the High Court. These proceedings before us are sequel to the chequered history of litigation, between the parties, over a period of two decades.

From the pleadings of the parties and the arguments addressed before us by the learned counsel the following questions arise for our consideration:-

1. What is `gambling'?

2. What is the meaning of expression "mere skill" in terms of Section 49-A of the Madras City Police Act, 1888 (The Police Act) and Section 11 of the Madras Gaming Act, 1930 (the Gamiang Act)?

3. Whether the running of horse-races by the club is a game of "chance" or a game of "mere skill"?

4. Whether `wagering' or `betting' on horce-races is `gaming' as defined by the Police Act and the Gaming Act?

5. Whether the horse-racing - even if it is a game of `mere skill' - is still prohibited under Section 49-A of the Police Act and Section 4 of the Gaming Act?

6. Whether the Madras Race Club (Acquisition and Transfer of Undertaking) Act, 1986 (the 1986 Act) gives effect to the policy under Article 39(b) and (c) of the Constitution of India (the Constitution) and as such is protected under Article 31(c) of the Constitution. If not, whether the 1986 Act is liable to be struck down as violative of Articles 14 and 19(1)(g) of the Constitution.

The new Encyclopaedia Britannica defines gambling as "The betting or staking of something of value, with consciousness of risk and hope of gain on the outcome of a game, a contest, or an uncertain event the result of which may be determined by chance or accident or have an unexpected result by reason of the better's miscalculations". According to Black's Law Dictionary (Sixth Edition) "gambling involves, not only chance, but a hope of gaining something beyond the amount played. Gambling consists of consideration, an element of chance and a reward"..... Gambling in a nut-shell is payment of a price for a chance to win a prize. Games may be of chance, or of skill or of skill and chance combined. A game of chance is determined entirely or in part by lot or mere luck. The throw of the dice, the turning of the wheel, the shuffling of the cards, are all modes of chance. In these games the result is wholly uncertain and doubtful. No human mind knows or can know what it will be until the dice is thrown, the wheel stops its revolution or the dealer has dealt with the cards. A game of skill, on the other hand - although the element of chance necessarily cannot be entirely eliminated

- is one in which success depends principally upon the superior knowledge, training, attention, experience and adroitness of the player. Golf, chess and even Rummy are considered to be games of skill. The courts have reasoned that there are few games, if any, which consist purely of chance or skill, and as such a game of chance is one in which the element of chance predominates over the element of skill, and a game of skill is one in which the element of skill predominates over the element of chance. It is the dominant element - "skill" or "chance" - which determines the character of the game.

The Public Gambling Act, 1867 provided punishment for public gambling and for keeping of "common gaming house". The Act did not bring within its scope the betting on horse races. The Bengal Public Gaming Act, 1867 provided punishment for public gambling and the keeping of common gaming house. Gaming was defined in the Bengal Act to include wagering or betting except wagering or betting on horse races. The next legislation was the Bombay Prevention of Gambling Act, 1887 which defines "gaming" in similar terms as the Bengal Act.

Before we deal with the Madras legislations on the subject, it would be useful to refer to the judgments of this Court wherein the question whether trade or business which is of `gambling' nature can be a fundamental right within the meaning of Article 19 (1) (g), of the Constitution.

This Court in State of Bombay Vs. R.M.D. Chamarbaugwala A.I.R., 1957 S.C. 699 speaking through S.R. Das, C.J. observed as under :

> "(38) From ancient times seers and law-

givers of India looked upon gambling as a sinful and pernicious vice and deprecated its practice. Hymn XXXIV of the Rigveda proclaims the demerit of gambling, Verses 7, 10 and 13 :

> "7. Dice verily are armed with goads and driving hooks, deceiving and tormenting, causing grievous woe. They give frail gifts and then destroy the man who wins, thickly anointed with the player's fairest good.

> 10. The gambler's wife is left forlorn and wretched: the mother mourns the son who wanders homeless. In constant fear, in debt, and seeking riches, he goes by night unto the home of others.
>
> 11. Play not with dice: no, cultivate thy cornland. Enjoy the gain, and deem that wealth sufficient. There are thy cattle, there thy wife, O gambler, so this good Savitar himself hath told me."

The Mahabharata deprecates gambling by depicting the woeful conditions of the Pandavas who had gambled away their kingdom."

> "While Manu condemned gambling outright, Yajnavalkya sought to bring it under State control but he too in verse 202 (2) provided that persons gambling with false dice or other instruments should be branded and punished by the king.

Kautilya also advocated State control of gambling and, as a practical person that he was, was not averse to the State earning some revenue therefrom.

Vrihaspati dealing with gambling in chap. XXVI, verse 199, recognises that gambling had been totally prohibited by Manu because it destroyed truth, honesty and wealth, while other law-givers permitted it when conducted under the control of the State so as to allow the king a share of every stake. Such was the notion of Hindu Law-givers regarding the vice of gambling. Hamilton in his Hedaya vol. IV, Book XLIV, includes gambling as a Kiraheeat or abomination. The learned Chief Justice then referred to various statutes in India prohibiting public gambling and also referred to case-law on the subject in other countries. He quoted the following observations of McTiernan, J. of the Australian High Court in King vs. Connara (1939) 61 C.L.R 596 (M) :-

> "Some trades are more adventurous or speculative than others, but trade or commerce as a branch of human activity belongs to an order entirely different from gaming o grabbing. Whether a particular activity falls within the one or the other order is a matter of social opinion rather than jurisprudence.....It is gambling to buy a ticket or share in a lottery. Such a transaction does not belong to the commercial business of the country. The purchaser stakes money in a scheme for distributing prizes by chance. He is a gamester."

On the question whether gambling is protected either by Article 19(1)(g) or Article 301 of the Constitution, this Court held as under:-

"(42) It will be abundantly clear from the fore going observations that the activities which have been condemned in this country from ancient times appear to have been equally discouraged and looked upon with disfavour in England, Scotland, the United States of America and in Australia in the cases referred to above.

We find it difficult to accept the contention that those activities which encourage a spirit of reckless propensity for making easy gain by lot or chance, which lead to the loss of the hard earned money of the undiscerning and improvident common man and thereby lower his standard of living and drive him into a chronic state of indebtedness and eventually disrupt the peace and happiness of his humble home could possibly have been intended by our Constitution makers to be raised to the status of trade, commerce or intercourse and to be made the subject matter of a fundamental right guaranteed by Art 19 (1) (g).

We find it difficult to persuade ourselves that gambling was ever intended to form any part of this ancient country's trade, commerce or intercourse to be declared as free under Art. 301. It is not our purpose nor is it necessary for us in deciding this case to attempt an exhaustive definition of the word "trade", business" or "intercourse," We are, however, clearly of opinion that whatever else may or may not be regarded as falling within the meaning of these words, gambling cannot certainly be taken as one of them. We are convinced and satisfied that the real purpose of Arts.19 (1)(g) and 301 could not possibly have been to guarantee or declare the freedom of gambling. Gambling activities from their very nature and in essence are extra-

commercium although the external forms, formalities and instruments of trade may be employed and they are not protected either by Art. 19 (1) (g) or Art. 301 or our Constitution.

On the crucial question whether the games which depend to a substantial degree upon the exercise of skill come within the stigma of "gambling", S.R. Das, Chief Justice in Chamarbaugwala's case held as under:-

> "Thus a prize competition for which a solution was prepared beforehand was clearly a gabbling prize competition, for the competitors were only invited to guess what the solution prepared beforehand by the promoters might be, or in other words, as Lord Hewer. C.J. Observed in Coles v. Odhams Press Ltd., 1936-1 K.B.416 (a) "The competitors are invited to pay certain number of pence to have the opportunity of taking blind shots at a hidden target".

Prize competitions to which the second part of the qualifying clause applied, that is to say, the prize competitions for which the solution was determined by lot, was necessarily a gambling adventure. Nor has it been questioned that the third category, which comprised "any other competition success in which does not depend to a substantial degree upon the exercise of skill", constituted a gambling competition. At one time the notion was that in order to be branded as gambling the competition must be one success in which depended entirely on chance. If even a scintillas of skill was required for success the competition could not be regarded as of a gambling nature.

The Court of Appeal in the judgment under appeal has shown how opinions have changed since the earlier decisions were given and it is not necessary for us to discuss the matter again. It will suffice to say that we agree with the Court of Appeal that a competition in order to avoid the stigma of gambling must depend to a substantial degree upon the exercise of skill. Therefore, a competition success wherein does not depend to a substantial degree upon the exercise of skill is now recognised

to be of a gabbling nature."

On the same day when this Court decided Chamarbaugwala's case, the same four-Judge Bench presided over by S.R. Das, Chief Justice, delivered judgment in another case between the same parties titled R.M.D. Chamarbaugwala & Anr. vs. Union of India & Anr. AIR 1957 SC

628. The validity of some of the provisions of the Prize Competitions Act (42 of 1955) was challenged before this Court by way of petitions under Article 32 of the Constitution. Venkatarama Ayyar J. speaking for the Court noticed the contentions of the learned counsel for the parties in the following words:-

> "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 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 Br. 11 and 12 are to be struck down in respect of such competitions 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."

The learned Judge thereafter observed as under:-

> "We must hold that as regards gambling competitions, the petitioners before us cannot seek the protection of Art. 19(1)
>
> (g)... (5) 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)..."

Finally, Venkatarama Ayyr, J. speaking for the Court held as under:-

> "(23) 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. 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."

This Court, therefore, in the two Chamarbaugwala-cases, has held that gambling is not trade and as such is not protected by Article 19(1) (g) of the Constitution. It has further been authoritatively held that the competitions which involve substantial skill are not gambling activities. Such competitions are business activities, the protection of which is guaranteed by Article 19(1) (g) of the Constitution. It is in this background that we have to examine the question whether horse-racing is a game of chance or a game involving substantial skill.

The Police Act extends to the whole of the city of Madras, as defined in Section 3 of the said Act. Section 3 of the Police Act defines "common gaming house", "gaming" and "instruments of gaming" in the following words:-

> "Common gaming-house" means any house, room, tent, enclosure, vehicle, vessel or any place whatsoever in which cards, dice, tables or other instruments of gaming are kept or used for the profit or gain of the person owning, occupying, using, or keeping such house, room, tent, enclosure, vehicle, vessel or place, whether by way of charge for the use of instruments of gaming or of the house, room, tent, enclosure, vehicle, vessel or place, or otherwise howsoever; and includes any house, room, tent, enclosure, vehicle, vessel or place opened, kept or used or permitted to be opened, kept or used for the purpose of gaming;
>
> "Gaming" `Gaming' does not include a lottery but includes wagering or betting, except wagering or betting on a horse-race when such wagering or betting takes place-
>
> (i) on the date on which such race is to be run; and

(ii) in a place or places within the race enclosure which the authority controlling such race has with the sanction of the State Government set apart for the purpose.

For the purposes of this definiting, wagering or betting shall be deemed to comprise the collection or soliciting of bets, the receipt of distribution of winnings or prizes, in money or otherwise, in respect of any wager or bet, or any act which is intended to aid or facilitate wagering or betting or such collection, soliciting, receipt or distribution.

Instruments of gaming- "Instruments of gaming" include any article used or intended to be used as a subject or means of gaming, any document used or intended to be used as a register or records or evidence of any gaming, the proceeds of any gaming, and any winnings or prizes in money or otherwise distributed or intended to be distributed in respect of any gaming." Section 42 of the Police Act gives power to the Commissioner to grant warrant to enter any place which is used as a common gaming house and the arrest of persons found therein and to seize all instruments of gaming etc. Section 43 provides that any cards, dyes, gaming table or cloth, board or other instruments of gaming found in any place entered or searched under Section 42 shall be evidence that such place is used as a common gaming house. Section 44 states that in order to convict any person of keeping common gaming house, the proof of playing for stakes shall not be necessary. Section 45 provides for penalty for opening, keeping or use of a gaming house. Section 46 lays down penalty for being found in a common gaming house for the purpose of gaming. Section 47 permits destruction of the instruments of gaming on conviction and Section 48 relates to indemnification of witnesses. Sections 49 and 49-A (to the extent relevant) of the Police Act are reproduced hereunder:-

"49.Nothing in sections 42 to 48 of this Act shall be held to apply to games of mere skill wherever played. 49-A, (1) Whoever-

(a) being the owner or occupier or having the use of any house, room, tent, enclosure, vehicle, vessel or place, opens, keeps or uses the same for the purpose of gaming-

(i) on a horse-race, or

(ii).....

(iii).....

(iv).....

(v).....

(vi).....

(b).....

(c).....

(d).....

shall be punishable with imprisonment for a term which may extend to two years and with fine which may extend to five thousand rupees, but in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of this Court-

i) such imprisonment shall not be less than three months and such fine shall not be less than five hundred rupees for the first offence;

ii) such imprisonment shall not be less than six months and such fine shall not be less than seven hundred and fifty rupees for the second offence; and

iii) such imprisonment shall not be less than one year and such fine shall not be less than one thousand rupees for the third or any subsequent offence."

Section 49-A of the Police Act was substituted for the original Section by Section 2(iii) of the Madras City Police and Gaming (Amendment) Act, 1955 (the 1955 Act).

The Gaming Act extends to the whole of the State of Tamil Nadu, with the exception of the city of Madras Section 3 of the Gaming Act defines, common gaming house, "gaming" and instruments of gaming which is identical to the definitions given under the Police Act. Section 5 to 10 of the Gaming Act are identical to Sections 42 to 47 of the Police Act. Section 11 of the Gaming Act is as under:-

> "11. Nothing in sections 5 to 10 of this Act shall be held to apply to games of mere skill wherever played."

Section 4 of the Gaming Act to extent relevant reads:-

"4. (1) Whoever-

(a) being the owner or occupier or having the use of any house, room, tent, enclosure, vehicle, vessel or place, opens, keeps or uses the same for the purpose of gaming-

(i) on a horse-race, or

(ii).....

(iii).....

(iv).....

(v).....

(vi).....

(b).....

(c).....

(d).....

The above quoted Section 4 of the Gaming Act was substituted by Section 3(1) of the 1955 Act. This Section is identical to Section 49-A of the Police Act.

The expression "gaming" as originally defined under the Police Act and the Gaming Act (the two Acts) did not include wagering or betting on a horse-race when such wagering or betting took place - (i) on the date on which such race was to run; and (ii) in a place or places within the raceenclosure which the authority controlling such race had with sanction of the State Government set apart for the purpose. The definition of gaming in the two Acts was sought to be amended by Sections 2 and 4 of the Madras City Police and Gaming (Amendment) Act, 1949 (the 1949 Act). The said Sections are reproduced hereunder:-

> "2. In the Madras City Police Act, 1888, in section 3, for the definition of `Gaming' the following definition shall be substituted, namely :-
>
> "Gaming does not include a lottery but includes wagering or betting. Explanation.-For the purpose of this definition, wagering or betting shall be deemed to comprise the collection or soliciting or bets, the receipt or distribution of winnings of prizes, in money or otherwise, in respect of any wager or bet, or any act which is intended to aid or facilitate or wagering or betting or such collections, soliciting, receipt or distribution".

4. In the Madras Gaming Act, 1930, in section 3, for the definition of `gaming' the following definition shall be substituted namely :-

> "Gaming" does not include a lottery but includes wagering or betting.
>
> Explanation.-For the purposes of his definition wagering or betting shall be deemed to comprise the collection or selecting or bets, the receipt or distribution of winnings or prizes, in money or otherwise, in respect of any wager or bet, or any act which is intended to aid or facilitate wagering or betting or such collection soliciting receipt or distribution".

It is obvious from the 198-Act that the words "except wagering or betting on a horse-race when such wagering or betting takes place - (i) on the date on which such race is to be run; and (ii) in a place or places within the race enclosure which the authority controlling such race has with the sanction of the State Government set apart for the purpose" have been omitted from the definition of "gaming"

in the two Acts. The State Government, however, did not enforce Sections 2 and 4 of the 1949-Act till 1975. Although no notification enforcing Sections 2 and 4 of the 1949 Act was ever issued by the State Government, but the said provisions have been brought into existence and enforced by an Act of Legislature called the Tamil Nadu Horse Races (Abolition and Wagering or Betting) Act, 1974 (the 1974 Act). Section 2 of the said Act is in the following terms:-

> "2. Amendment of Tamil Nadu Act VII of 1949.- In the Madras City Police and Gaming (Amendment) Act, 1949.- In the Madras City Police and Gaming (Amendment) Act, 1949 (Tamil Nadu Act VII of 1949), (1) in sub-section (2), the portion commencing with the expression "and sections 2 and 4" and ending with the expression "appoint", shall be omitted; (2) after sub-section (2), the following sub-section shall be inserted, namely:-
>
> (3) Sections 2 and 4 shall come into force on the 31st March 1975, notwithstanding anything contained in any law for the time being in force or in any notification or order issued by the Government".

The 1974 Act was challenged before the High Court by way of writ petition under Article 226 of the Constitution. The challenge was primarily on two grounds. It was contended before the High Court that the betting on the horse races not being gambling the State Legislature, under entry 34 of list II of the Seventh Schedule to the Constitution, had no legislative competence to legislate the 1974 Act. In other words the contention was that entry 34 being "Betting and gambling" unless both betting and gambling are involved the State Legislature has no legislative competence to make the law. It was also contended that the horse racing being a game of substantial skill, the provisions of the two Acts were not applicable to horse races. The High Court rejected both the contentions. The High Court held the horse racing to be a game of chance, and as such gambling, on the following reasons:-

> "The question is whether, having regard to his approach, betting on horse races is of gambling nature. We are told that it is not, because betters bring to bear on betting considerable knowledge of each horse as to its ancestry or pedigree, history of its performance in the previous races, various other factors and related circumstances and skill based on such knowledge and experience in horse racing. We, of course, know the plethora of publications, information by means of booklets, pamphlets and even books and the knowledge about horses and horse races all over the world for centuries and the tremendous enthusiasm exhibited by those race-goers who in deciding to stake on a particular horse, know everything about it which enables them to judge that it may in all probability come out successful in a race. Even so, if any skill is involved in the process, it is not the skill of the horse but of the one who bets on it and, based on such skill, the better cannot say with any certainty that a horse without fail will in any case come out successful. It may be that the knowledge and experience one would have or skill of one who bets on a horse may with their use eliminate as far as possible, the odd chance of failure and ensure to a degree so to speak, a probability of success; but the most astute better by using his substantial skill may still fail to be successful in his stake. The element of chance is not out

> weighed by any skill of the better or the horse. The figures we were shown would only show that successful betting on horses sometimes, not necessarily every time goes with substantial skill of the one who stakes. But we are not persuaded that betting on horses is a game of substantial skill. Horse racing is a competition on speed which will depend on a variety of changing and uncertain factors which, with the best of knowledge and skill of the better, cannot reduced to a certainty, though of course by such knowledge and skill the probability of success of a particular horse may be approximated. In our opinion, therefore, betting on horses does involve an element of gambling and we are unable to agree that staking on horses with expert knowledge and skill of the better is not betting involving an element of gambling."

This appeal by way of leave granted by the High Court has been filed by the club. Under the interim orders of this Court, issued from time to time, the club is functioning and the horse races are being conducted. During the pendency of the appeal the Tamil Nadu Legislature has enacted the Madras Race Club (Acquisition and transfer of undertakings) Act, 1986 (The 1986 Act). The said Act came into force on April 19, 1986. Writ petitions under Article 32 of the Constitution challenging the validity of the 1986 Act have been filed by the committee members of the club, horse owners and other interested persons.

We may at this stage notice the manner in which the club operates and conducts the horse races. Race meetings are held in the club-race courses at Madras and OOty for which the bets are made inside the race course premises. Admission to the race course is by tickets (entrance fee) prescribed by the club. Separate entrance fee is prescribed for the first enclosure and the second enclosure. About 1- 1/2 of the entrance fee represents the entertainment tax payable to the Commercial Tax Department of the State Government. The balance goes to the club's account. Betting on the horses, participating in the races, may be made either at the club's totalizators (the totes) by purchasing tickets of Rs.5/- denomination or with the Book Makers (Bookies) who are licensed by the club and operate within the first enclosure. The totalizator is an electronically operated device which pools all the bets and after deducting betting tax and the club charges, works out a dividend to be paid out as winnings to those who have backed the successful horses in the race. Book Makers, on the other hand, operate on their own account by directly entering into contracts with the individual punters who come to them and place bets on horses on the odds specified by the Book Makers. The book Makers issue to the punters printed betting cards on which are entered the Book Maker's name, the name of the horse backed, the amount of bet and the amount of prize money payable if the horse wins. The winning punters collect their money directly from the Book Maker concerned. The net result is that 75% of the Tote-collections of each race are distributed as prize money for winning tickets, 20% is paid as betting tax to the State Government and the remaining 5% is retained by the club as commission. Similarly, the Book Makers collect from their punters, besides the bet amount specified in the betting card, 20% bet-tax payable to the State and 5% payable to the club as its commission. It is thus obvious that the club is entitled to only 5% as commission from the tote-collections and also from the total receipts of the Book Makers. According to the appellant the punters who bet at the totalizator or with the Book Makers have no direct contract with the club.

The club pays from its own funds the prize money (stake-money) to the winning horses. The horses who win the first, second, third and upto 5th or 6th place are given prizes by the club. The club income consists of entrance fee, 5% commission paid by the Book Makers and the totalizators, horse entry fee paid by the owners of the horses participating in the race and the licence fee charged by the club from the Book Makers.

We may now take-up the second question for consideration. Section 49 of the Police Act and Section 11 of the Gaming Act specifically provide that the penal provisions of the two Acts shall not apply to the games of "mere skill wherever played". The expression "game of mere skill" has been interpreted by this Court to mean "mainly and preponderantly a game of skill". In State of Andhra Pradesh vs. K. Satyanarayana & Ors. (1968) 2 SCR 387, the question before this Court was whether the game of Rummy was a game of mere skill or a game of chance. The said question was to be answered on the interpretation of Section 14 of the Hyderabad Gambling Act (2 of 1305 F) which was pari materia to Section 49 of the Police Act and Section 11 of the Gaming Act. This Court referred to the proceedings before the courts below in the following words:

> "The learned Magistrate who tried the case was of the opinion that the offence was proved, because of the presumption since it was not successfully repelled on behalf of the present respondents. In the order making the reference the learned Sessions Judge made two points:
>
> He first referred to s.14 of the Act which provides that nothing done under the Act shall apply to any game of mere skill wherever played and he was of opinion on the authority of two cases decided by the Madras High Court and one of the Andhra High Court that the game of Rummy was a game of skill and therefore the Act did not apply to the case."

This Court held the game of Rummy to be a game of mere skill on the following reasoning:

> "We are also not satisfied that the protection of s.14 is not available in this case. The game of Rummy is not a game entirely of chance like the `three- card' game mentioned in the Madras case to which we were referred. The `three card' game which goes under different names such as `flush', `brag' etc. is a game of pure chance. Rummy, on the other hand requires certain amount of skill because the fall of the cards has to be memorised and the building up of Rummy requires considerable skill in holding and discarding cards. We cannot, therefore, say that the game of Rummy is a game of entire chance. It is mainly and preponderantly a game of skill. The chance in Rummy is of the same character as the chance in a deal at a game of bridge. In fact in all games in which cards are shuffled and dealt out, there is an element of chance, because the distribution of the cards is not according to any set pattern but is dependent upon how the cards find their place in the shuffled pack. From this alone it cannot be said that Rummy is a game of chance and there is no skill involved in it."

The judgments of this Court in the two Chamarbaugwala cases and in the Satyanarayana case clearly lay-down that

(i) the competitions where success depends on substantial degree of skill are not `gambling' and (ii) despite there being an element of chance if a game is preponderantly a game of skill it would nevertheless be a game of "mere skill". We, therefore, hold that the expression "mere skill"

> would mean substantial degree or preponderance of skill.
>
> The crucial question to be determined is whether a horse-race run on the turf of the club is a game of `chance' or a game of "mere skill". The relevant pleadings before the High Court in the writ petition were as under:
>
> "Racing is really a test of equine speed and stamina. The horses are trained to run and their form is constantly watched by experts... As stated earlier, racing is not a game of chance. Experts on racing throughout the world would bear testimony to the fact, and indeed it has been so recognised, by decisions, that the result of a horse race on which bets are placed is not based on pure chance. A considerable degree of skill does into the operation. It starts from the breeding and training of the race horse on which much talent, time and money are expended by trained persons, jockeys have also to be specially trained and equipped. The horses themselves are not necessarily consistent in fitness, which is the reason why horses are exercised openly and watched carefully by representatives of the Press and their observations widely published. Thus, the inherent capacity of the animal, the capability of the jockey, the form and fitness of the horse, the weights carried and the distance of the race at the time of the race are all objective facts capable of assessment by race goers. Thus the prediction of the result of the race is not like drawing 3 aces in a game of poker. Rather, it is the result of much knowledge, study and observation..... Horse racing has been universally recognised as a sport. Horsemanship involves considerable skill, technique and knowledge and jockeys have to be specially trained over a period of years. Whether a particular horse wins at the race or not, is not dependent on mere chance or accident but is determined by numerous factors, such as the pedigree of the animal, the training given to it as well as the rider, its current form, the nature of the race, etc. Horse racing has been held judicially to be a game of skill unlike pure games of chance like Roulette or a Lottery."

The above quoted averments have not been specifically denied in the counter affidavit filed before the High Court.

The new Encyclopaedia Britannica 15th Edition, Volume 5 at page 105, while defining the expression "gambling" refers to horse racing as under:

> "Betting on horse racing or athletic contests involves the assessment of a contestant's physical capacity and the use of other evaluative skills.".

Volume 6 of the Encyclopaedia at page 68 onwards deals with the subject of horse-racing. Thoroughbred horses with pedigree are selected and trained for races. Horse-racing is a systematic sport where a participant is supposed to have full knowledge about the horse, jockey, trainer, owner, turf and the composition of the race. It would be useful to quote an extract from the Encyclopaedia:

> Horse racing, sport of running horses at speed, mainly, Thoroughbreds with a rider astride or Standardbreds with the horse pulling a conveyance with a driver. These two kinds of racing are called racing on the flat and harness racing. Some races on the flat involve jumping....."
>
> "Knowledge of the first horse race is probably lost in prehistory. Both four- hitch chariot and mounted (bareback) races were held in the Olympic Games of 700-40 BC. Other history of organized racing is not very firmly established. Presumably, organized racing began in such countries as China, Persia, Arabia, and other countries of the Middle East and of North Africa, where horsemanship early became highly developed. Thence came too the Arabian, Barb, and Turk horses that contributed to the earliest European racing. Such horses became familiar to Europeans during the Crusades (11th to 13th centuries) from which they brought those horses back....."
>
> "Eligibility rules were developed based on the age, sex, birthplace, and previous performance of horses and the qualifications of riders. Races were created in which owners were the riders (gentlemen riders); in which the field was restricted geographically to a township or country; and in which only horses that had not won more than a certain amount were entered....." "All horse racing on the flat except quarter- horse racing involves Thoroughbred (q.v) horses. Thoroughbreds evolved from a mixture of Arab, Turk and Barb horses with native English stock Private studbooks existed from the early 17th century, but they were not invariably reliable. In 1791 Whether by published An Introduction to a General Stud Book, the pedigrees being based on earlier Racing Calendars and Sales papers. After a few years of revision, it was updated annually. All Thoroughbreds are said to descend from three "Oriental" stallions (the Darley Arabian, the Godolphin Barb, and the Byerly Turk, all brought to Great Britain, 1690-1730) and from 43 "royal" mares (those imported by Charles II). The predominance of English racing and hence of the General Stud Book from 1791 provided a standard....." "A race horse achieves peak ability at age five, but the classic age of three years and the escalating size of purses, breeding fees, and sale prices made for fewer races with horses beyond the age of four....."
>
> "Over the centuries the guiding principle for breeding thoroughbreds has been, as expressed by an old cliche breed the best to the best and hope for the best. Performance of progeny is the most reliable guide to what is best for breeding purposes, of course but in the case of horses untried at stud, their own racing ability, pedigree, and physical conformation are the only available yardsticks. Emphasis is on racing ability, especially in evaluating potential stallions."

Horse racing is an organized institution. Apart from a sport, it has become a huge public entertainment business. According to The New Encyclopaedia Britannica the occasion of certain races are recorded as public holidays. Derby day at Epsom where the public is admitted on two parts of the grounds at no fee has drawn as many as 5,00,000 spectators. Attendance at horse races in many countries is the highest or among the highest of all sports. The horses which participate in the races are a class by themselves. They have a history of their own. The breed of the horse is an important factor. The experts select the horses who are to be inducted into the racing profession. The selected horses are given extensive training by professional trainers. Breed, upbringing, training and the past record of the race

- horses are prominently published and circulated for the benefit of prospective bettors. Jockeys are experts in horse riding and are extensively trained in various aspects of horse-racing. They are supposed to know the horse they are riding and the turf on which the horse is to run.

Judicial pronouncements on the subject are primarily of American Courts. In People of Monroe 85 ALR 605, it was held that the pari-mutuel betting on the result of horse races, did not violate a provision of the State Constitution prohibiting lotteries. The Court observed as under:

> "The winning horse is not determined by chance alone, but the condition, speed, and endurance of the horse, aided by the skill and management of the rider or driver, enter into the result... In our opinion the parimutuel system does not come within the constitutional inhibition as to lotteries.... `In horse racing the horses are subject to human guidance, management, and urging to put forth their best efforts to win'."

The question before the Michigan Supreme Court in Edwarad J. Rohan et al. vs. Detroit Racing Association et al., 166 ALR 1 246 , was whether Act No.199 Pub. Acts 1933, authorising pari-mutuel betting on horse races violated the constitutional prohibition against lotteries. The Court answered the question in the negative on the following reasoning:

> "In the case of Commonwealth v.
>
> Kentucky Jockey Club, 238 Ky 739, 38 SW2d 987, a statute perimitting pari- mutuel betting on horse races was held to be constitutional and not in violation of a provision of the State Constitution prohibiting lotteries. See, also Utah State Fair Ass'n v. Green 68 Utah 251, 249 P 1016; Panas v. Texas Breeders & Racing Ass'n, Inc., Tex Civ App, 80 SW2d 1020; State v. Thompson, 160 Mo 333, 60 SE 1077, 54 LRA 950, 83 Am St Rep 468; Engle v. State of Arizona, 53 Ariz 458, 90 P2d 988; Stoddart v. Sagar, 64 Lj (MC) 234, 2 QB 474; Caminada v. Hulton, 60 LJ (MC) 116, 64 LT 572.
>
> Under the above authorities it is clear that pari-mutuel betting on a horse race is not a lottery. In a lottery the winner is determined by lot or chance, and a participant has no opportunity to exercise his reason, judgment, sagacity or discretion. In a horse race the winner is not determined by chance alone, as the condition, speed and endurance of the horse and the skill and management of the rider are factors

> affecting the result of the race. The better has the opportunity to exercise his judgment and discretion in determining the horse on which to bet. The pari-mutuel method or system of betting on a horse race does not affect or determine the result of the race. The pari-mutuel machine is merely a convenient mechanical device for recording and tabulating information regarding the number and amount of bets (Utah State Fair Ass'n v. Green, (supra)), and from this information the betting odds on the horses entered can be calculated and determined from time to time during the process of betting.

The recording and tabulating of bets could be done manually by individuals, but the pari-mutuel machine is a more convenient and faster method. The fact that a better cannot determine the exact amount he may win at the time he places his bet, because the odds may change during the course of betting on a race, does not make the betting a mare game of chance, since the better can exercise his reason, judgment, and discretion in selecting the horse he thinks will win. Horse racing, like foot racing, boat racing, football, and baseball, is a game of skill and judgment and not a game of chance. Utah State Fair Ass'n v. Green, supra.

Therefore, we conclude that Act No.199, Pub. Actys 1933, authorizing pari-mutuel betting on horse races, does not violate the constitutional prohibition against lotteries."

In Harless v. United States (1943) Morris (lowa) 169, the Court while holding that horse racing was not a game of chance observed as under:

> "The word game does not embrace all uncertain events, nor does the expression `games of chance' embrace all games. As generally understood, games are of two kinds, games of chance and games of skill. Besides, there are trials of strength, trials of speed, and various other uncertainties which are perhaps no games at all, certainly they are not games of chance. Among this class may be ranked a horse race. It is as much a game for two persons to strive which can raise the heaviest weight, or live the longest under water, as it is to test the speed of two horses. It is said that a horse race is not only uncertain in its result, but is often dependent upon accident. So is almost every transaction of human life, but this does not render them games of chance. There is a wide difference between chance and accident. The one is the intervention of some unlooked-for circumstance to prevent an expected result, the other is uncalculated effect of mere luck. The shot discharged at random strikes its object by chance ; that which is turned aside from its well-directed aim by some unforeseen circumstance misses its mark by accident. In this case, therefore, we reasonably feel disappointed, but not in the other, for blind uncertainty is the chief element of chance. In fact, pure chance consists in the entire absence of all the means of calculating results; accident in the unusual prevention of an effect naturally resulting from the means employed. That the fleetest horse sometimes stumbles in the race course and leaves the victory to its more fortunate antagonist is the result of accident, but the gambler, whose success depends upon the turn of the cards or the throwing of the dice, trusts his fortune to chance. It is said that there are strictly few or no games

> of chance, but that skill enters as a very material element in most or all of them. This, however, does not prevent them from being games of chance within the meaning of the law. There are many games the result of which depends entirely upon skill. Chance is in nowise resorted to therein. Such games are not prohibited by the statute. But there are other games [in] which, although they call for the exercise of much skill, there is an intermingling of chance. The result depends in a very considerable degree upon sheer hazard. These are the games against which the statute is directed, and horse racing is not included in that class."

In Engle vs. State (1989) 55 Ariz 458, horse racing was held to be a game of skill and not of chance on the following reasoning:

> "There is some conflict perhaps in the cases as to whether horse racing be in itself a game of chance, but we think the decided weight of authority and reason is that it is not. In any game there is a possibility that some oversight or unexpected incident may affect the result, and if these incidents are sufficient to make a game in which it may occur one of chance, there is no such thing as a game of skill.
>
> In Utah State Fair Asso. v. Green (1926) 68 Utah 251, a horse race was held not to be a game of chance within the prohibition of a state Constitution, which provided that the legislature should not authorize any game of chance, lottery, or gift enterprise, since in respect thereto the elements of judgment, learning, experience, and skill predominate over the element of chance."

Russell L.J. in Earl of Ellesmere v. Wallace 1929 (2) CH1, while dealing with the question whether there was a contract by way of wagering between the Jocky club and the horse owners observed as under :

> "To the unsophisticated racing man (if such there be) I should think that nothing less like a bet can well be imagined. It is payment of entrance money to entitle an owner to compete with other owners for a prize built up in part by entrance fees, the winning of the prize to be determined not by chance but by the skill and merit of horse and jockey combined....."
>
> "Let us clear out minds of the betting atmosphere which surrounds all horse racing, and affirm a few relevant propositions. There is nothing illegal in horse racing : it is a lawful sport. There is nothing illegal in betting per se. There is all the difference in the world between a club sweepstakes on the result of the Derby and a sweepstakes horse race as defined in the Rules of Racing. In each no doubt the winner is ascertained, by the result of an uncertain event, but in the case of the former the winner is ascertained by chance, i.e. the luck of the draw not the result of the race (for the result is the same whether the draw is made before or after the race); in the case of the latter the winner is ascertained not by chance, but by merit of performance. The former is a lottery ; the latter is not".

We have no hesitation in reaching the conclusion that the horse-racing is a sport which primarily depends on the special ability acquired by training. It is the speed and stamina of the horse, acquired by training, which matters. Jockeys are experts in the art of riding. Between two equally fast horses, a better trained jockey can touch the winning-post.

In view of the discussion and the authorities referred to by us, we hold that the horse-racing is a game where the winning depends substantially and preponderantly on skill.

Mr. Ashok Desai, learned counsel for the State of Tamil Nadu, has contended that the "handicap horse races"

> introduce an element of chance and as such horse racing is not a game of skill. We do not agree. It is no doubt correct that in a handicap race the competitors are given advantages or disadvantages or weight, distance, time etc. in an attempt to equalize their chances of winning, but that is not the classic concept of horse-racing, according to which the best horse should win. The very concept of handicap race goes to show that there is no element of chance in the regular horse-racing. It is a game of skill. Even in a handicap race - despite the assignment of imposts - the skill dominates. In any case an occasional handicap race in a race-club cannot change the natural horse-racing from a game of skill to that of chance.
>
> The expression `gaming' in the two Acts has to be interpreted in the light of the law laid-down by this Court in the two Chamarbaugwala cases, wherein it has been authoritatively held that a competition which substantially depends on skill is not gambling. Gaming is the act or practice of gambling on a game of chance. It is staking on chance where chance is the controlling factor. `Gaming' in the two Acts would, therefore, mean wagering or betting on games of chance. It would not include games of skill like horse-racing. In any case, Section 49 of the Police Act and Section 11 of the Gaming Act specifically save the games of mere skill from the penal provisions of the two Acts. We, therefore, hold that wagering or betting on horse-racing - a game of skill - does not come within the definition of `gaming' under the two Acts.
>
> Mr. Parasaran has relied on the judgment of the House of Lords in Attorney General vs. Luncheon and Sports Club, Limited 1929 AC 400, and the judgment of the Court of Appeal in Tote Investors, Ltd. vs Smoker 1967 (3) A.E.R. 242, in support of the contention that de hors Section 49 of the Police Act and Section 11 of the Gaming Act, there is no `wagering' or `betting' by a punter with the club. According to him, a punter bets or wagers with the totalizator or the Book Maker and not with the club. It is not necessary for us to go into this question. Even if there is wagering or betting with the club it is on a game of mere skill and as such it would not be `gaming' under the two Acts.
>
> Next comes question five for consideration. Section 49A of the Police Act and Section 4 of the Gaming Act were brought into these two Acts by the 1955 Act by substituting

the original Sections. The provisions of these two Sections have been operating since 1955. `Gaming' as defined in the two Acts, prior to March 31, 1975. did not include wagering or betting on a horse-race when such wagering or betting took place (i) on the date on which such race was to be run; and (ii) in a place or places within the race enclosure which the authority controlling such race had with the sanction of the State Government set apart for the purpose. The position which emerges is that during the period from 1955 till March 31, 1975 horse-racing was not prohibited under the two Acts, despite the fact that Section 49A of the Police Act and Section 4 of the Gaming Act were also operating. If we accept the contention of the learned counsel for the respondents that Section 49A of the Police Act and Section 4 of the Gaming Act prohibit the holding of the horse-races then two contradictory provisions had been operating in the two Acts from 1955 till 1975. One set of provisions would have prohibited the horse-races by making it an offence and the other set of provisions would have permitted the horse-races. The Legislature could have never intended such a situation. The only reasonable interpretation which can be given to the two sets of provisions in the two Acts is that they apply to two different situations. Section 49A of the Police Act and Section 4 of the Gaming Act do not apply to wagering or betting in the club premises and on the horse-races conducted within the enclosure of the club. These Sections are applicable to the bucket-shops run in the city streets or bazaars purely for gambling purposes. It would be useful to have a look at the Statement of Objects and Reasons of the 1955 Act, which is as under :-

`STATEMENT OF OBJECTS AND REASONS. The Madras City Police Act, 1888, and the Madras gaming Act, 1980, provide for punishment for opening or keeping or conducting, etc., any common gaming house and for being found gaming in a common gaming house. A situation has arisen particularly in the City of Madras where gambling in public streets on the figures in the prices of New York Cotton, bullion, etc., and in the registration number of motor vehicles has become very widespread. In order to put down this evil it is considered necessary that the offence of betting on cotton price figures and bullion price figures, etc., in the open streets should also be made punishable and that the punishment, which is at present very inadequate, should be made more deterrent.

It is also considered desirable to bring the language of the provisions relating to gaming in the City Police Act in line with that in the Gaming Act and also to combine the sections relating to gaming on horse race and on other forms of gaming which are separate in the respective Acts at present. Opportunity has also been taken to omit certain provisions which prohibit publications relating to horse races as they have been held ultra vires the State Legislatures by the Madras High Court. It is proposed to amend these two Acts so as to give effect to the above objects."

It is obvious that the 1955 Act was brought to control gambling in public streets and motor vehicles. It is further clear from the Objects and Reasons that the Act did not intend to stop horse-racing, because even the prohibition on publications relating to horse-racing was sought to be omitted

under the Act.

We may examine the question from another angle. We have held horse-racing to be a game of skill and as such protected under Section 49 of the Police Act and Section 11 of the Gaming Act. Horse-racing is not a game of chance and as such is not gambling. That being the situation, horse-racing which is conducted at the race course of the club is not "gaming" under the two Acts and as such cannot be made penal. We have, therefore, no hesitation in holding that Section 49A of the Police Act and Section 4 of the Gaming Act are not applicable to wagering or betting on a horse- race when such wagering or betting takes place within the club premises and on the date on which such race is actually run on the turf of the club. These Sections are applicable to the bucket-shops or any c, house room, tent, enclosure, vehicle, etc. which are run in the streets, bazaars or any other place away from the club.

We may finally deal with the constitutional validity of the 1986 Act. The object and reasons and the preamble of the 1986 Act are as under:-

> "An Act to provide for the acquisition, for a public purpose, and transfer of the undertaking of the Madras Race Club and for matters connected therewith or incidental thereto.
>
> WHEREAS the Madras Race Club, which is a company, within the meaning of the Companies Act, 1956 (Central Act 1 of 1956), is engaged in the business of running of horse races at Madras and at Uthagamandalam including the business of inter-venue betting;

AND WHEREAS it has been brought to the notice of the Government that the Committee of management of the Madras Race Club is ridden with factions and that the affairs of the said Clib are not conducted properly and in particular in the interests of the race going public;

AND WHEREAS it has been brought to the notice of the Government that the book- makers keep huge amounts of bet from records causing substantial loss of revenue to the Government; AND WHEREAS the Government are satisfied that the Madras Race Club is being mismanaged and that the interests of the race-going public have been affected considerably; AND WHEREAS the irregularities and malpractices in the conduct of the races and in the conduct of the affairs of the Madras race Club have resulted in the concentration of wealth and means of production in a few hands, and to the common detriment;

AND WHEREAS with reference to clauses

(b) and (c) of Article 39 of the Constitution, it is expedient to provide that the ownership and control of the material resources of the Madras race Club is so distributed as best to subserve the common good and that the operation of the economic system of the Madras Race Club does not result in the concentration of wealth and means of production to the common detriment; AND WHEREAS it is necessary that the interests of the race-going public should be better served;

AND WHEREAS a policy decision has been taken to acquire for a public purpose the undertaking of the Madras race Club to enable the State Government or a Corporation or a Company wholly owned by the State, to properly conduct the horse races and to carry out the other objects of the club, so as to subserve the interests of the general public and in particular, the race-going public;"

Sections 2, 4 and 5 (1) of the Act are reproduced hereunder:-

"2. Declaration.- It is hereby declared that this Act is for giving effect to the policy of the State towards securing the principles laid down in clauses (b) and (c) of Article 39 of the Constitution.

4. Transfer to, and vesting in, the Government of the Undertaking of the Club.- On the appointed day, the undertaking of the club and right, title and interest of the club in relation to its undertaking shall, by virtue of this Act stand transferred to, and vest in, the Government.

5. General effect of vesting.-(1) The undertaking of the club shall be deemed to include the business in the running of horse races at Madras and at Uthagamandalam (including inter-venue betting on horse races) and the business in relation to the other objects of the club and shall be deemed also to include all assets, rights, leaseholds, powers, authorities and privileges and all property, movable and immovable, including lands, buildings, works, stores, automobiles and other vehicles, bank balances, cash balances, reserve funds, investments and book debts and all other rights and interests in, or arising out of, such property as were immediately before the appointed day in the ownership possession, power or control of the club in relation to the undertaking whether within or outside India, and all books of account, registers and all other documents of whatever nature relating thereto and shall also be deemed to include, the liabilities specified in sub-section (1) of section 25".

Section 6 of the Act empowers the State Government to direct the vesting of the undertaking in a Government company. According to Section 7, the Government or Government company shall not be liable for the liabilities of the club prior to the date of the coming into force of the Act. Section 8 provides that for the transfer to, and vesting in, the Government under Section 4 and the right, title and interest of the club, at shall be paid by the Government in cash and in the manner specified in Chapter VI. Sub-section s (2) and (3) of Section 8 provide that the amount for acquisition to be paid would be calculated on the basis of the book value after deducting the depreciation calculated in accordance with the First Schedule. Chapter IV, consisting of Section

9. 10 & 11, provides for management etc. of the undertaking of the club. Chapter V, consisting of Sections 12 & 13, deals with employees of the undertaking. Sections 14 to 23 deal with the appointment of Commissioner of Payment and the powers of the Commissioner to make payments. The amount quantified with reference to the value of the assets taken over by the Government is not payable to the club but is payable to the Commissioner appointed under Section 14. The 1986 Act makes elaborate provisions for distribution of the amount payable amongst creditors or the club.

The Act prescribes its own scheme of priorities as amongst the creditors and it is only what remains with the commissioner after making all payments that is handed over to the club.

Mr. Prasaran has vehemently contended that the protection of Article 31-C of the Constitution cannot be made available to the 1986 Act as the provisions of the said Act have no nexus with the objects of Article 39 (b) and (c) of the Constitution.

It is settled proposition of law that notwithstanding the declaration by the Legislature that the Act has been made to implement the Directive Principles specified in Article 39, it would be open to the Court to ignore such a declaration in a given case and examine the constitutional validity of the Act. The declaration cannot act as a cloak to protect the law bearing no relationship with the objectives contained in Article 39 of the Constitution. This Court in Assam Sillimanite Limited and another vs. Union of India and others 1992 Supp (1) SCC 692, stated the legal position in the following terms:-

> "28. The extent and scope of judicial review of legislation where there is a declaration under Article 31-C of the Constitution which enjoins that no law containing a declaration that it is for giving effect to such a policy shall be called in question in any Court on the plea that it does not give effect to such a policy has been considered in Kesavananda Bharati. On an analysis of the majority judgment therein, Sabyasachi Mukharji, J. (as he then was) observed in Tinsukhia Electric Supply Company case that the declaration in Article 31_C does not exclude the jurisdiction of the Court to determine whether the law is for giving effect to the policy of the State towards securing the principles specified in Articles 39
>
> (b) and (c). Mathew J. had observed in Kesavananda Bharati that in order to decide whether a law gives effect to the police of the state towards securing the directive principles specified in Article 39 (b) or (c), a Court will have to examine the pith and substance, the true nature and character of the law as also its design and the subject matter dealt with by it together with its object and scope. If a law passed ostensibly to give effect to the policy of the State is, in truth and substance, one for accomplishing an unauthorised object, the Court would be entitled to tear the veil created by the declaration and decide according to the real nature of the law."

Article 39 (b) 7 (c) of the Constitution are as under:-

> "39(a).....
>
> (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
>
> (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
>
> (d).....

(e).....

(f)....."

The main object for which the club was established is to carry on the business of race club, in particular the running of horse-races, steeple chases or races of any other kind and for any kind of athletic sports and for playing their own games of cricket, bowls, golf, long tennis, pollo or any other kind of games or amusement, recreation, sport or entertainment etc. In the earlier part of this judgment, we have noticed the working of the club which shows that part from 5% commission from the totalisator and the book makers no part of the betting-money comes to the club. The club does not own or control any material resources of the community which are to be distributed in terms of Article 39(b) of the Constitution of India. There are two aspects of the functioning of the club. One is the betting by the punters at the totalisator and with the bookies. The club does not earn any income from the betting-money except 5% commission. There is no question whatsoever of the club owning or controlling the material resources of the community or in any manner contributing towards the operation of the economic system resulting in the concentration of wealth and means of production to the common detriment. The second aspect is the conduct of horse- races by the club. Horse-racing is a game of skill, the horse which wins the race is given prize by the club. It is a simple game of horse racing where the winning horses are given prizes. Neither the "material resources of the community" nor "to subserve the common good" has any relevance to the twin functioning of the club. Similarly, the operation of the club has no relation or effect on the "operation of the economic system." there is no question whatsoever of attracting the Directive Principles contained in Article 39 (b) and (c) of the Constitution. The declaration in Section 2 of the Act and the recital containing aims and objectives totally betray the scope and purpose of Article 39 (b) and (c) of the Constitution. While Article 39 (b) refers to "material resources of the community", the aims and objects of the Act refer to "the material resources of the Madras Race Club". It is difficult to understand what exactly are the material resources of the race-club which are sought to be distributed so as to sub- serve the common good within the meaning of the Directive Principles. Equally, the reference to Article 39(c) is wholly misplaced. While Article 39(c) relates to "the operation of the economic system.... to the common detriment", the aims and objectives of the Act refer to "the economic system of the Madras Race Club". What is meant by the economic system of the Madras Race Club is not known. Even if it is assumed that betting by the punters at the totalisator and with the book makers is part of the economic system of the Madras Race Club, it has no relevance to the objectives specified in Article 39(b) and (C). We are, therefore, of the view that reference to Article 39(b) and

(c) in the aims and objects and in Section 2 of the Act is nothing but a mechanical reproduction of constitutional provisions in a totally in-appropriate context. There is no nexus so far as the provisions of the 1986 Act are concerned with the objectives contained in Article 39(b) and (c) of the Constitution. We, therefore, hold that the protection under Article 31(C) of the Constitution cannot be extended to the 1986 Act.

Article 31-C having gone out, Articles 14 and 19 of the Constitution come in. Mr. Prasaran has vehemently contended that it may be permissible for the legislature to classify a single company where it possesses real and substantial features different from other companies similarly situated,

but where no reasonable basis for the classification appears on the face of the legislation nor is deducible from the surrounding circumstances, the legislation would be hit by Article 14 of the Constitution. According to Mr. Prasaran the race-club is a company registered under Section 25 of the Indian Companies Act, 1956 (the Companies Act). If there is mismanagement of the affairs of the club by the Directors/members of the club, necessary action can be taken against the club under the Companies Act, which provides elaborate procedure for such a situation. It is further contended that keeping in view the history of the legislation and the circumstances of this case, the taking over of the undertaking of the race-club by the impugned Act is arbitrary. Mr. Prasaran contended that the "public purpose" for which the undertaking of the club has been acquired is non-existent on the face of the provisions of the impugned Act. Mr. prasaran has also contended that the horse-racing, being a game of skill, it is not gambling, and as such the business of horse-racing is a fundamental right guaranteed under the Constitution. Taking away the business of the petitioners is hit by Article 19(1) (g) of the Constitution.

We may examine the contention based on Article 14 of the Constitution. The object, reasons and the preamble of the 1986 Act indicate that :-

> (i) The race club is a company under the Companies Act and is engaged in the business of running of horse-races;
>
> (ii) The management of the Company is ridden with factions and the affairs of the company are not conducted properly;
>
> (iii) Instances of irregularities and mal-practices in the conduct of the horse-races have been brought to the notice of the Government;
>
> (iv) The book-makers keep huge amounts of bet from records causing substantial loss of revenue to the Government; and
>
> (v) The Government are satisfied that the company is being mismanaged and the interests of the race-going public have been affected considerably.

It was for the above reasons that the impugned Act acquiring, for a public purpose, the undertaking of the club was enacted.

There is no material on the record to show that any inquiry or investigation was held by the State Government in the affairs of the club. In the facts and circumstances of this case, it was of considerable importance that there should be a proper inquiry held by the Government before such an action is taken. The inquiry should show that the management have so misbehaved and mismanaged that they are no longer fit and proper persons to be permitted to manage the affairs of the club. Even if the mismanagement on the part of the club is assumed, it is not open to single-out a club of the type for discriminatory treatment. May be that a race-club of national importance or of considerable importance in the State can be taken over in the interest of the State can be taken over in the interest of the State, but the club is an ordinary race-club which has no impact whatsoever on

the material resources of the community or the economic system of the State. There are no special circumstances or reasons to single-out the club as a class for the purposes of the impugned Act. Even if we were to accept the recitation in the objects and reasons that the company was being mismanaged, we are of the view that the Companies Act provide for ample machinery to deal with the mismanagement in the companies registered under the Companies Act. It is true that the presumption is in favour of the constitutionality of a legislative enactment and it is to be presumed that a legislature understands and appreciates the needs of its own people, but when on the face of the Statute there is no classification and no attempt has been made to select an individual with reference to any differentiating attributes peculiar to that individual and not possessed by others, the presumption is of no assistance to the State. In the present case the petitioner club is a company like any other company registered under the Companies Act. Elaborate machinery and well established procedural safeguards have been provided under the Companies Act for dealing with the mismanagement in the companies registered under the Companies Act. We see no reasonable basis for classifying the race-club for the purposes of acquiring and transfer of its undertaking on the ground of mismanagement.

We see considerable force in the contention of Mr. Parasaran that the acquisition and transfer of the undertaking of the club is arbitrary. The two Acts were amended by the 1949 Act and the definition of "gaming" was amended. The object of the amendment was to include horse racing in the definition of "gaming". The provisions of the 1949 Act were, however, not enforced till the 1974 Act was enacted and enforced with effect from March 31, 1975. The 1974 Act was enacted and enforced with effect from March 31, 1975. The 1974 Act was enacted with a view to provide for the abolition of wagering or betting on horse races in the State of Tamil Nadu. It is thus obvious that the consistent policy of the State Government, as projected through various legislations from 1949 onwards, has been to declare horse racing as gambling and as such prohibited under the two Acts. The operation of the 1974 Act was stayed by this Court and as a consequence the horse races are continuing under the orders of this Court. The policy of the State Government as projected in all the enactments on the subject prior to 1985 shows that the State Government considered horse racing as gambling and as such prohibited under the law. The 1985 Act on the other hand declares horse racing as a public purpose and in the interest of the general public. There is apparent contradiction in the two stands. We do not agree with the contention of Mr. Parasaran that the 1985 Act is a colourable piece of legislation, but at the same time we are of the view that no public purpose is being served by acquisition and transfer of the undertaking of the club by the Government. We fail to understand how the State Government can acquire and take over the functioning of the race club when it has already enacted the 1974 Act with the avowed object of declaring horse racing as gambling? Having enacted a law to abolish betting on horse racing and stoutly defending the same before this Court in the name of public good and public morality, it is not open to the State Government to acquire the undertaking of horse racing again in the name of public good and public purpose. It is ex- facie irrational to invoke "public good and public purpose"

> for declaring horse racing as gambling and as such prohibited under law, and at the same time speak of "public purpose and public good" for acquiring the race club and conducting the horse racing by the Government itself. Arbitrariness is writ large on the face of the provisions of the 1985 Act.

We, therefore, hold that the provisions of 1985 Act are discriminatory and arbitrary and as such violate and infarct the right to equality enshrined under Article 14 of the Constitution.

Since we have a truck down the 1985 Act on the ground that it violates Article 14 of the Constitution, it is not necessary for us to go into the question of its validity on the ground of Article 19 of the Constitution.

We allow the writ petitions and the civil appeal. The impugned judgment of the High Court is set aside. We hold and declare that horse racing is a game of mere skill within the meaning of Section 49 of the Police Act and Section 11 of the Gaming Act. Horse racing is neither "gaming" nor "gambling" as defined and envisaged under the two Acts read with the 1974 Act and the penal provisions of these Acts are not applicable to the horse racing which is a game of skill. The 1985 Act is ultra vires Article 14 of the Constitution and as such is stuck down.

We direct the Committee of Management under the Chairmanship of Justice S. Natarajan, appointed by this Court, to hand over the management, functioning and operation of the club to a duly constituted Management Committee, under the Memorandum and Articles of Association of the Club, before March 31, 1996. We leave the parties to bear their own costs.