

MANUEL UY, PLAINTIFF-APPELLEE, VS. ENRICO PALOMAR, IN HIS CAPACITY AS POSTMASTER GENERAL, DEFENDANT-APPELLANT.*G.R. No. L-23248. February 28, 1969*

Ponente: ZALDIVAR, J.

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Manuel Uy filed a complaint with the Court of First Instance of Manila (Civil Case No. 55678) against the Postmaster General, praying for an injunction to restrain said Postmaster General and his subordinates, agents or representatives from enforcing Fraud Order No. 3, dated November 22, 1963, declaring Manuel Uy Sweepstakes Agency as conducting a lottery or gift enterprise and directing all postmasters and other employees of the Bureau of Posts concerned to return to the sender any mail matter addressed to Manuel Uy Sweepstakes Agency or to any of its agents or representatives with the notation "Fraudulent" stamped upon the cover of such mail matter, and prohi-biting the issuance or payment of any money order or teleg-raphic transfer to the said agency or to any of its agents and representatives.

As prayed for in the complaint, a writ of preliminary injunction was issued ex-parte by the lower court. The Postmaster General moved for the dissolution of the writ of preliminary injunction, but the motion was denied.

The Postmaster General filed an answer to the com-plaint, setting up the defense that Manuel Uy was con-ducting a lottery or gift enterprise that is prohibited by law; that as Postmaster General he has the authority to issue the fraud order in question and he did not abuse his discretion in doing so; and that Manuel Uy had not exhausted all the administrative remedies before in-voking judicial intervention.

The lower court, on the basis of the stipulation of facts submitted by the parties, declared Fraud Order No. 3 contrary to law and violative of the rights of the plaintiff and made permanent the preliminary injunction previously issued.

The Postmaster General appealed to this Court.

The salient facts gathered from the stipulation of facts and culled from the briefs of the parties are as follows:

Manuel Uy (appellee, for short) is a duly authorized agent or the Philippine Charity Sweepstakes Office (PCSO, for short), a government entity created and empowered by law to hold sweepstakes draws and lotteries for charitable and public purposes. As such agent of the PCSO, appellee is engaged in the sale and distribution or sweepstakes and lottery tickets which the PCSO prints and issues for each and every one of the not less than twenty draws that said office annually holds. To carry out its business of selling sweepstakes and lottery tickets issued by the PCSO, appellee, upon authority of the said office, employs sub-agents throughout the Philippines, through which sub-agents not less than 70% of appellee's total sales for each draw are made; and, with the consent of the PCSO, ap-pellee agrees to give 50% of the agent's prize to the sub-agent selling the prize-winning ticket. The agent's prize is 10% of the prize won by the ticket sold.

For the Grand Christmas Sweepstakes Draw which would be held on December 15, 1963, the PCSO fixed the

first, second and third prizes at P700,000.00, P350,000.00, and P175,000.00, respectively, and set a sale goal of P6,000,000.00 worth of tickets. The PCSO directed its duly authorized agents to undertake every means possible to help achieve the six-million-peso sales goal. In compliance with said directive, appellee devised and, through his representatives, offered to the public, the "Grand Christmas Bonus Award" plan. The plan was designed to boost the sales of tickets for the PCSO Grand Christmas Sweepstakes Draw. According to said plan, the appellee's sub-agents and purchasers of whole sweepstakes tickets sold by appellee and his sub-agents may, in addition to the regular prize money of the December 15, 1963 draw, win bonuses and awards as follows: for the sub-agent and buyer of the ticket winning the first prize, one 1963 Volkswagen sedan each; for the sub-agent and buyer of the ticket winning the second prize, one Radiowearth 23-inch television set each; for the sub-agent and buyer of the ticket winning the third prize, one Radiowearth refrigerator each; for the sub-agents and buyers of the tickets winning any of the six fourth prizes, one Radiowearth sewing machine each; and for the sub-agent and buyer of the ticket winning the charity prize, one Radiowearth Fiesta "hi-fi" radio set each. Except for the amount paid for the authorized price of the sweepstakes tickets, those entitled to benefit from the plan did not have to pay any other amount in consideration of the right to benefit from the plan. The awards may be claimed by presenting to the appellee the sales invoice of the winning tickets, in the case of the sellers, and the eight shares of the winning tickets, in the case of the buyers.

The aforementioned plan is a modification (or alter-native plan, as the appellee calls it) of the original scheme presented by the appellee, thru counsel, to the Assistant Postmaster General in a letter dated October 15, 1963, and which the latter, in his answer dated October 18, 1963, considered as violative of the Postal Law.

The appellee advertised his "Grand Christmas Bonus Award" plan, as described above, in the metropolitan news-papers of nationwide circulation, the first of such ad-vertisements appearing in seven such newspapers in their issues of November 18, 1963. The newspaper advertisements were repeated almost every week after November 18, 1963, with the last of them published in the issue of the "Daily Mirror" of December 7, 1963.

As already stated, the fraud order in question was issued by the Postmaster-General (appellant, for short) under date of November 22, 1963. However, it was only on December 10, 1963 that the appellee came to know of the issuance and context thereof when he sought clarification from the Manila Post Office why his parcels containing sweepstakes tickets for his sub-agents, as well as his other mail matters of purely personal nature, were refused acceptance for mailing the day previous.

In the afternoon of December 10, 1963, appellee filed the complaint, mentioned at the beginning of this opinion, alleging among others, that in issuing Fraud Order No. 3 the appellant "has acted arbitrarily or gravely exceeded his authority, and/or committed an error of law." [1]

Disclaiming that in issuing the fraud order he acted arbitrarily, or gravely exceeded his authority and/or committed an error of law, appellant, in his answer to the complaint, cites as basis of his action, the provisions of Sections 1954 (a); 1982, and 1983 of the Postal Law (Chapter 52 of the Revised Administrative Code), pertinent portions of which read:

"SEC. 1954. Absolutely nonmailable matter. - No matter belonging to any or the following classes, whether sealed as first-class matter or not, shall be imported into the Philippines through the mails, or be deposited in or carried by the mails of the Philippines, or be delivered to its addressee by any officer or employee of the Bureau of Posts:

(a) Written or printed matter in any form advertising, describing, or in any manner pertaining to, or conveying or purporting to convey any information concerning any lottery, gift enterprise, or similar scheme depending in whole or in part upon lot or chance, or any scheme, device, or enterprise for obtaining money or property of any kind by means of false or fraudulent pretenses,

x x x x

"SEC. 1982. Fraud Orders. - Upon satisfactory evidence that any person or company is engaged in conducting any lottery, gift enterprise, or scheme or the distribution of money, or of any real or personal property by lot, chance, or drawing of any kind, or that any person or company is conducting any scheme, device, or enterprise for obtaining money or property of any kind through the mails by means of false or fraudulent pretenses, representations, or promises, the Director of Posts may instruct any postmaster or other officer or employee of the Bureau of Posts to return to the person depositing same in the mails, with the word "fraudulent" plainly written or stamped upon the outside cover thereof, any mail matter of whatever class mailed by or addressed to such person or company or the representative or agent of such person or company. x x x."

"SEC. 1983. Deprivation of use order system and telegraphic transfer service. - Director of Posts may, upon evidence satisfactory to him that any person or company is engaged in conducting any lottery, gift enterprise, or scheme for the distribution of money or any real or personal property by lot, chance, or drawing of any kind, or that any person or company is conducting any scheme, device, or enterprise for obtaining money or property of any kind through the mails by means of false or fraudulent pretenses, representations, or promise, forbid the issue or payment by any postmaster of any postal money order or telegraphic transfer to said person or company, or to the agent of any such person or company, whether such agent is acting as an individual or as a firm, bank, corporation, or association of any kind, and may provide by regulation for the return to the remitters of the sums named in money orders or telegraphic transfers drawn in favor of such person or company or its agent. x x x." (Underscoring supplied).

Invoking the phrase "upon evidence satisfactory to him", the appellant contends that the fraud order in question was legally issued because he had been satisfied with the evidence presented to him that appellee was conducting a lottery or gift enterprise.[2] We note that the appellee does not question the authority of the appellant, under Section 1954 (a), 1982 and 1983 aforequoted, to prohibit the use of the mails, the money order system and the telegraphic transfer service for the promotion of lotteries, gift enterprises or fraudulent schemes.[3] Indeed, appellant would be remiss in the performance of his duties should he fail to exercise his authority under the Postal Law if and when the mails, the money order system, and the telegraphic transfer service are utilized for the promotion of lotteries, gift enterprises and similar schemes prohibited by law. Appellant's authority, however, is not absolute. Neither does the law give him unlimited discretion. The appellant may only exercise his authority if there is a clear showing that the mails, the money order system and the telegraphic transfer service are used to promote a scheme or enterprise prohibited by law.

In the present case, therefore, the question that must be resolved is whether appellee's "Grand Christmas Bonus Award" plan constitutes a lottery, gift enterprise, or similar scheme proscribed by the Postal Law, aforequoted, as would authorize the appellant to issue the fraud order in question.

Before we resolve the question, however, we wish to advert to the claim of the appellant that he had made his decision based upon satisfactory evidence that the "Grand Christmas Bonus Award" plan of appellee is a lottery or gift enterprise for the distribution of gifts by chance, and his decision in this regard cannot be reviewed by the court.[4]

Thus, the appellant, in his brief[5], says:

"It is respectfully submitted that corollary to the rule that courts cannot interfere in the performance of ordinary duties of the executive department is the equally compelling rule that decisions of the department on questions of fact are final and conclusive and generally cannot be reviewed by the courts. For it cannot be denied that the Postmaster General is charged with quasi-judicial functions and vested with discretion in determining what is mailable matter and in withholding from the plaintiff the privilege of using the mail, the money order system and the telegraphic transfer service. x x x As the disputed Fraud Order No. 3 was issued

pursuant to the powers vested in the defendant by the Postal Law and in accordance with satisfactory evidence presented to him, it can-not be said that the defendant was palpably wrong or that his decision had no reasonable basis whatever. Neither can it be said that he exceeded his authority nor that he abused his discretion."

In this connection it may be stated that the Postal Law contains no provision for judicial review of the decision of the Postmaster General. This Court, however, in *Reyes vs. Topacio*[6] had stated that the action of the Director of Posts (now Postmaster General) is subject to revision by the courts in case he exceeded his authority or his act is palpably wrong. And in *"El Debate" Inc. vs. Topacio*,[7] this Court said that the courts will not interfere with the decision of the Director of Posts (Postmaster General) as to what is, and what is not, a mailable matter unless clearly of opinion that it was wrong. In other words, the courts will interfere with the decision of the Postmaster General if it clearly appears that the decision is wrong. This Court, by said rulings, recognizes the availability of judicial review over the action of the Postmaster General, notwithstanding the absence of statutory provision for judicial review of his action. It may not be amiss to state that said rulings are in consonance with American jurisprudence to the effect that the absence of statutory provisions for judicial review does not necessarily mean that access to the courts is barred. The silence of the Congress is not to be construed as indicating a legislative intent to preclude judicial review[8]. In *American School of Magnetic Healing vs. McAnnulty*[9], the U.S. Supreme Court, speaking on the power of the courts to review the action of the Postmaster General under a statute similar to our Postal Law,[10] said:

"That the conduct of the postoffice is a part of the administrative department of the government is entirely true, but that does not necessarily and always oust the courts of jurisdiction to grant relief to a party aggrieved by any action by the head, or one of the subordinate officials, of that Department, which is unauthorized by the statute under which he assumes to act. The acts of all its officers must be justified by some law; and in case an official violates the law to the injury of an individual the courts generally have jurisdiction to grant relief."

Appellant also invokes the doctrine of exhaustion of administrative remedies, and asserts that the action of the appellee in the present case was premature because he had not first appealed the fraud order to higher administrative authorities. This assertion of appellant has no merit. The rule on exhaustion of administrative remedies is not a hard and fast one. It admits of exceptions, amongst which are: (1) where the question involved is purely a legal one[11], and (2) where there are circumstances indicating the urgency or judicial intervention[12]. The question involved in the present case is legal -- whether or not the "Grand Christmas Bonus Award" plan of appellee, based upon the facts as stipulated, is a lottery or gift enterprise. We take note that the Grand Christmas Sweepstakes draw in conjunction with which appellee's plan was offered, was scheduled for December 15, 1903, or barely five days from December 10, 1963, the date when appellee learned of the issuance of the fraud order. Time was of the essence to the appellee.

We now resolve the main question in this case, namely, whether or not appellee's "Grand Christmas Bonus Award" plan constitutes a lottery or a gift enterprise. There is no statutory definition of the terms "lottery" and "gift enterprise". This Court, in the case of *"El Debate" Inc., vs. Topacio*, supra, referring to lottery, said:

"x x x while countless definitions or lottery have been attempted, the authoritative one for this jurisdiction is that of the United States Supreme Court, in analogous cases having to do with the power of the United States Postmaster General, viz: The term 'lottery' extends to all schemes for the distribution of prizes by chance, such as policy playing, gift exhibitions, prize concerts, raffles at fairs, etc., and various forms of gambling. The three essential elements of a lottery are: First, consideration; second, prize; and third, chance (*Horner vs. United States* [1982] 147 U.S. 449; *Public Clearing House vs. Coyne* [1903] 194 U.S., 497; *U.S. vs. Filart and Singson* [1915] 30 Phil., 80; *U.S. Olsen and Marker* [1917] 36 Phil. 395; *U.S. vs. Baguio* [1919] 39 Phil. 962; *Valhalla Hotel Construction Company vs. Carmona*, p. 233, ante.)"

Thus, for lottery to exist, three elements must con-cur, namely: consideration, prize, and chance.

Appellant maintains that all the elements of lot-tery are present in the "Grand Christmas Bonus Award" plan of the appellee, to wit: "(1) consideration, because to participate and win in the contest one must buy and resell (in case of sub-agents) or buy (in case of ticket buyers) only 'Manuel Uy' tickets; (2) prize, because or the goods to be awarded to the winners; and (3) chance, because the determination or the winners depends upon the results or the sweepstakes draw which is decidedly a game of chance." [13] With particular emphasis on the element of consideration, appellant likens this case to the "El Debate" case, supra, and paraphrasing the ruling therein says that "By analogy, there is consideration with respect to persons who will buy 'Manuel Uy' tickets (in preference to tickets solo by other authorized agents, like Tagumpay, Pelagia Viray, Marcela Meer Millar, etc.) merely to win prizes in addition to the regular sweepstakes prizes (and it is to such per-sons that the scheme is directed); moreover, the persons patronizing the Manuel Uy Sweepstakes Agency do not all re-ceive same amount and some may receive more than the value paid for their tickets through chance and the prizes award-ed by the Philippine Charity Sweepstakes Office." [14]

As against this contention, appellee maintains that there is absence of the element of consideration because except for paying the authorized purchase price of the corresponding sweepstakes tickets, those entitled to participate in and to benefit from appellee's "Grand Christmas Bonus Award" plan do not part with any other consideration for the right to take part and benefit therefrom, which fact is admitted by the appellant. [15] Further, appellee contends that even under the test laid down in the "El Debate" case, the element of con-sideration is lacking because appellee's sub-agents would have continued to sell and the general public would have continued to buy 'Manuel Uy' tickets regardless of appellee's "Christmas Bonus Award" plan. [16] Moreover, appellee advances the view that under another test adopted by American courts as shown by a review of comparative case law in the United States, there can be no considera-tion under the plan in question because the participants pay no money or its equivalent into a fund which pays for the prize. [17]

Speaking of the element of consideration, this Court in the aforementioned "El Debate" case, and quoted in Caltex (Phil.) Inc. vs. Postmaster General, [18] said:

"In respect to the last element of consideration, the law does not condemn the gratuitous distribution of property by chance, if no consideration is derived directly or indirectly from the party receiving the chance, but does condemn as criminal, schemes in which a valuable consideration of some kind is paid directly or indirectly for the chance to draw a prize."

In the "Grand Christmas Bonus Award" plan of the appellee We do not see the presence of the element of consideration, that is, payment of something of value, or agreement to pay, for the chance to win the bonus or award offered. True, that to be a participant in said plan, one must have to buy a whole sweepstakes ticket (8 shares) sold by the Manuel Uy Sweepstakes Agency or by its sub-agents. But the payment for the price or the sweepstakes ticket is the consideration for the chance to win any of the prize offered by the PCSO in the sweepstakes draw of December 15, 1963. Wholly or part-ly, said payment cannot be deemed as a consideration also for the chance to win the prizes offered by the appellee. For nothing is asked of, or received from, the buyer of the ticket more than the authorized price thereof, and which price appears on the face of the ticket. In fact, appellant admits that except for the price of the ticket, those entitled to participate and benefit from the plan do not part with any other con-sideration for the right to take part and benefit therefrom. [19] Indeed, as correctly observed by the lower court, there is absolutely no separate consideration for the right to win any of the offered bonuses or awards."

The analogy drawn by the appellant from the "El Debate" case is not persuasive. On the contrary, the "reason" or "inducement" test laid down in said case in determining the presence of the element of considera-tion seems to

favor the appellee. Paraphrased, the test as expressed in the "El Debate" case is: if the reason for the subscription of the "El Debate" was the desire to subscribe regardless of any prize offered, then there was no consideration insofar as the prize plan is concerned; upon the other hand, if the reason for the subscription was to win the prize offered, then the payment of the subscription fee constituted a consideration for the chance to win the prize. In the instant case, there are two groups of participants in appellee's plan, namely: the sub-agents and the ticket buyers. It cannot be denied that the sub-agents who, as stated in the stipulation of facts, are responsible for not less than 70% of appellee's total sales for every draw, would have continued to be appellee's sub-agents and would have sold "Manuel Uy" tickets regardless of the plan in question. Anyway, they stood to receive 50% of the agent's prize for any of the prize-winning ticket they could sell. Upon the other hand, the probability is that the general public would have purchased "Manuel Uy" tickets in their desire to win any of the prizes offered by the PCSO regardless of the inducement offered by the appellee to win additional prizes. This conclusion finds support from the admitted fact that the appellee has consistently sold the greatest number of tickets among the PCSO's authorized agents.[20] And undoubtedly, every person who purchased sweepstakes tickets from the Manuel Uy Sweepstakes Agency for the December 15, 1963 draw must have been induced, not by the prizes offered by the appellee but by the substantial prizes offered by the PCSO, to wit: First prize, P700,000.00; Second prize P350,000.00; and Third prize, P175,000.00.

It may not be amiss to state at this juncture that the comparative case law in the United States indicates that there is another test for determining whether or not the element of consideration exists in a given scheme or plan so as to constitute the same a lottery under parallel anti-lottery legislation. In *Post Publishing Co., vs. Murray*,[21] it was held:

"The advertisement or scheme in question does not seem to be like any of the kinds or types of wrong against which the Act of Congress was directed. It did not present a lottery scheme because it involves a raising of money by selling chances to share in the distribution of prizes -- a scheme for the distribution of prizes by chance among persons purchasing tickets. It was not a gift enterprise because a gift enterprise contemplates a scheme in which publishers or sellers give presents as inducements to members of the public to part with their money." (Underscoring supplied.)

The more recent case of *Garden City Chamber of Commerce vs. Wagner*[22] laid down the test in more definitive terms, as follows:

"The examination of authorities made in the present case induces the belief that the consideration requisite to a lottery is a contribution in kind to the fund or property to be distributed. (Underscoring supplied)"

The test indicated in the foregoing rulings simply means that unless the participants pay money or its equivalent into a fund which pays for the prizes, there is no lottery. Stated differently, there is consideration or price paid if it appears that the prizes offered, by whatever name they may be called, came out of the fund raised by the sale of chances among the participants in order to win the prizes. Conversely, if the prizes do not come out of the fund or contributions by the participants, no consideration has been paid, and consequently there is no lottery.

In the instant case, as stated by the lower court, the prizes offered by the appellee were to be taken from his share in the agent's prize[23], which was 10% of the amount of the prize won by each ticket sold.[24] Therefore, since none of the prizes (awards and bonuses) offered in appellee's plan were to come directly from the aggregate price of the sweepstakes tickets sold by appellee, as a part thereof, no consideration exists for the chance to win said prizes, there being no "contribution in kind to the fund or property to be distributed."

Appellant, however, urges that the patronage of "Manuel Uy" tickets constitutes a consideration because from the increased sales, appellee would derive benefits in the form of "returns on his quite substantial investment." This suggestion is without merit. The question of consideration is not to be determined from the standpoint of the

appellee, or the proponent of the scheme, but rather from that or the sub-agents and the ticket buyers. Said this Court in *Caltex (Phil.) case*, supra, on this point:

"Off-tangent, too, is the suggestion that the scheme, being admittedly for sales promotion, would naturally benefit the sponsor in the way of increased patronage by those who will be encouraged to prefer Caltex products 'if only to get the chance to draw a prize by securing entry blanks'. The required element of consideration does not consist of the benefit derived by the proponent of the contest. The true test, as laid down in *People vs. Gerdes*, 28 P. 2d., 99, 137 Cal. App. (Supp.) 788, is whether the participant pays a valuable consideration for the chance, and not whether those conducting the enterprise received something or value in return for the distribution or the prize. Perspective properly oriented, the standpoint of the contestant is all that matters, not that of the sponsor. The following, culled, from *Corpus Juris Secundum*, should set the matter at rest:

"The fact that the holder of the drawing expects thereby to receive, some benefit in the way of patronage or otherwise, as a result of the drawing, does not supply the element of consideration. - *Griffith Amusement Co. v. Morgan*, Tex. Civ. App., 98 S.W. 2d., 844. (54 C.J.S., p. 849)."

Equally enlightening in this connection is the following dissertation of the court in the case of *State vs. Hundling*:^[25]

"The question is not whether the donor of the prize makes a profit in some remote and indirect way, but, rather, whether those who have a chance at the prize pay anything of value for that chance. Every scheme of advertising, including the giving away or premiums and prizes, naturally has for its object, not purely a philanthropic purpose, but increased business. Even the corner grocer who gives candy to the children of the neighborhood may be prompted by that motive, but that does not make the gift unlawful. And if the grocer, instead of giving candy to all the children, gives it only to some as determined by lot, that circumstance does not make the gift made unlawful by the further circumstance that the business of the grocer in the neighborhood may be thereby increased. Profit accruing remotely and indirectly to the person who gives the prize is not a substitute for the requirement that he who has the chance to win the prize must a valuable consideration therefor) in order to make the scheme a lottery." (Underscoring supplied.)

Based on the foregoing rulings, therefore, it is clear that there is no consideration or price for the chance to win any of the prizes offered by the appellee in his "Grand Christmas Bonus Award" plan. There being no consideration, there is no lottery^[26].

Even in the light of the mischief or evil sought to be redressed by the Postal Law, or the ratio legis, the appellee's scheme cannot be condemned as a lottery. It is merely a scheme set up to promote the sale of tickets for the Grand Christmas Sweepstakes Draw held on December 15, 1963. Should any question be raised it would be: whether or not sweepstakes draws cultivate or stimulate the gambling spirit among the people. It should be so, because it cannot be doubted that sweepstakes tickets purchasers are induced to buy said tickets because of the desire to win any or the substantial prizes offered by the PCSO. This question, however, is at once rendered moot and academic because sweepstakes draws are authorized by law.

But appellant presents as an alternative argument the contention that even if assuming that "the element of consideration is lacking, the scheme is still a gift enterprise which is also prohibited by the Postal Law." And in support of this contention or proposition, appellant relies solely on Opinion No. 217, series of 1953 of the Secretary of Justice, which, according to the appellant, "ruled that the elements of gift enterprise, as distinguished from the lottery, are only chance and prize."

In the *Caltex (Phil.) case*, supra, this Court, rejecting a similar contention of the appellant, emphatically held:

"[W]e note that in the Postal Law, the term in question (gift enterprise) is used in association with the word

"lot-tery'. With the meaning of lottery set-tled, and consonant to the well-known principle of legal hermeneutics noscitur a sociis- which Opinion 217 aforesaid also relied upon although only in so far as the element of chance is concerned - it is only logical that the term under construct-ion should be accorded no other meaning than that which is consistent with the nature of the word associated therewith. Hence, if lottery is prohibited only if it involves a consideration, so also must the term 'gift enterprise' be so construed. Significantly, there is not in the law the slightest indicium of any intent to eliminate that element of consideration from the 'gift enterprise' therein included.

"This conclusion firms up in the light of the mischief sought to be remedied by the law, resort to the determination thereof being an accepted extrinsic aid in statutory construction. Mail fraud orders, it is axiomatic, are designed to prevent the use of the mails as a medium for disseminating printed matters which on grounds of public policy are declared non-mail-able. As applied to lotteries, gift enterprises and similar schemes, justification lies in the recognized necessity to suppress their tendency to inflame the gambling spirit and to corrupt public morals (Com. vs. Lund, 15 A. 2d., 839, 143 Pa. Super. 208). Since in gambling it is inherent that something of value be hazarded for a chance to gain a larger amount, it fol-lows ineluctably that where no con-sideration is paid by the contestant to participate, the reason behind the law can hardly be said to obtain. If, as it has been held -

'Gratuitous distribution of property by lot or chance does not constitute "lottery", if it is not resorted to as a device to evade the law and no consideration is derived) direct-ly or indirectly, from the party receiving the chance, gambling spirit not being cultivated or stimulated thereby. (City of Ros-well vs. Jones, 67 P. 2d., 286, 41 N.M., 258.' (25 Words and Phrases, perm. ed., p. 695, underscoring)'.
x x x

We find no obstacle in saying the same respecting a gift enterprise. In the end, we are persuaded to hold that, under the prohibitive provisions of the Postal Law which we have heretofore examined, gift enterprises and similar schemes there-in contemplated are condemnable only if, like lotteries, they involve the element of consideration. x x x."

Considered in the light of the foregoing elucida-tions, the conclusion is irresistible that since in the instant case the element of consideration is lack-ing, the plan or scheme in question is also not a "gift enterprise" or a "similar scheme" proscribed by the Postal Law.

Not being a lottery, gift enterprise or similar scheme, appellee's "Grand Christmas Bonus Award" plan can be considered a scheme for the gratuitous dis-tribution of personal property by chance which the Postal. Law does not condemn. Thus, in labelling said scheme as a lottery or gift enterprise when it is not, appellant not only committed a palpable error of law but also exceeded his statutory authority in issuing the fraud order in question. The power of the appel-lant to issue a fraud order under the Postal Law is dependent upon the existence of a lottery, gift enterprise or similar scheme.

Accordingly, the lower court did not err in dec-laring the fraud order in question contrary to law and in substituting its judgment for that of the appellant. The lower court did not also err in issuing the writ or injunction, the remedy adequate, speedy and appropriate under the circumstances.

"x x x The Postmaster General's order being the result of a mistaken view of the law, could not operate as a defense to his action on the part of the defendant, though it might justify his obedience thereto until some action of the court. In such a case as the one before us there is no adequate re-medy at law, the injunction to prohibit the further withholding of the mail from complaint being the only remedy at all adequate to the full relief to which the complainants are entitled. x x x"[27]

WHEREFORE, the decision appealed from should be, as it is hereby, affirmed. No pronouncement as to costs.

IT IS SO ORDERED.

Concepcion, C.J., Reyes, Dizon, Makalintal, Castro, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur.
Sanchez, J., no part.

[1] Par. XIII, Complaint; p. 12, Record on Appeal representations, or promises."

[2] Appellant's Brief, pp. 26-27.

[3] Appellee's Brief, p. 55.

[4] Fifth Assignment of Error.

[5] Appellant's Brief, pp. 29-30.

[6] 44 Phil. 207.

[7] 44 Phil. 278, citing Sotto vs. Ruiz, 21 Phil. 468.

[8] Schwartz, An Introduction to American Administrative Law, 2nd Ed., p. 173.

[9] 187 U.S. 94, 47 L.Ed. 90, 23 S. Ct. 33.

[10] "Section 1982 of the Administrative Code is copied from Section 3929 of the Revised Statutes (U.S.) and Section 1983 of the Administrative Code is copied from Section 4041 of the Revised Statutes (U.S.)." (Reyes vs. Topacio, supra). Among the statutory provisions involved in American School of Magnetic Healing case are Sections 3929 and 4041 of the Revised Statutes which are silent concerning judicial review of the fraud order issued by the Postmaster General.

[11] Cariño, et al. vs. ACCA, G.R. No. L-19808, Sept. 29, 1966.

[12] Gonzales vs. Hechanova, G.R. No. L-21897, Oct. 22, 1963.

[13] Appellant's Brief, p. 15.

[14] Appellant's Brief, pp. 17-13.

[15] Appellee's Brief, pp. 23-24; Par. 5, Stipulation of facts, p. 52, Record on Appeal.

[16] Ibid., p. 28.

[17] Ibid., pp. 31-32.

[18] G. R. No. L-19650, Sept. 29, 1966.

[19] Par. 5, Stipulation of Facts.

[20] This fact was alleged in par. 4 of the complaint and admitted by appellant in par. 4 of the Answer.

[21] (1916) 230 F. 773.

[22] (1951) 100 F. Supp. 769-772.

[23] Appellant's Brief, p. 49.

[24] Par. 2, Stipulation of Facts.

[25] 264 N.W. 608; 103 ALR 861-864.

[26] It is no longer necessary or desirable to cuss the other elements of lottery because the absence of consideration (or any one of the elements) takes out the scheme from the definition of prohibited lot-tery.

[27] American School of Magnetic Healing vs. Mc-Annulty, supra.

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