

**State of Goa and Others Vs. State of Karnataka and Others**

**State of Goa and Others Vs. State of Karnataka and Others**

**SooperKanoon Citation :** [sooperkanoon.com/371598](http://sooperkanoon.com/371598)

**Court :** Karnataka

**Decided On :** Sep-04-1996

**Reported in :** AIR1997Kant161

**Judge :** R.V. Raveendran, J.

**Acts :** Constituion of India - Articles 246 (1 and 3); Goa State Lottery Rules, 1991

**Appeal No. :** Writ Petition Nos. 23014 and 23015 of 1996

**Appellant :** State of Goa and Others

**Respondent :** State of Karnataka and Others

**Advocate for Def. :** S. Udayashanker, AGA

**Advocate for Pet/Ap. :** K. Gopala Hegde, Adv.

**Judgement :**

ORDER

1. The First Petitioner is the State of Goa. Second Petitioner is the authorised agent and sole distributor of the First Petitioner, for marketing the lotteries organised by First Petitioner.

2. First Petitioner organises two types of lotteries under the Goa State Lottery Rules, 1991. The first is the conventional/traditional lottery, known as open number tickets, wherein the lottery tickets are sold to participants and the winning

tickets are drawn from the pool of tickets offered for sale. In this scheme, the sale of open number tickets concludes before the lottery draw is actually held. The second is known as instant lottery, where the sale of tickets commences only after declaration of the results and continues till the last date fixed by the Director of State Lotteries. These Petitions relate to the legality of Instant Lotteries and the right of the State of Karnataka (first Respondent) to prohibit the sale of tickets under such Instant Lottery Scheme organised by another State.

3. The petitioners contend that each State has the right to conduct, lotteries and other State cannot prohibit or regulate sale of such lotteries in their States. They also contend that the Instant Lottery organised by State of Goa conforms to the essential characteristics of a lottery organised by a State and, therefore, the other States where tickets of such lottery are sold, cannot regulate or prohibit sale of such tickets. In this behalf, reliance is placed on two decisions of the Supreme Court in *H. Anraj v. State of Maharashtra*, AIR 1984 SC 78 and *State of Haryana v. Suman Enterprise* : (1994)4SCC217

3.1 In Anraj's case, the Supreme Court held as follows at Page 783 :--

'Entry 40 of List I of the VII Schedule to the Constitution is 'Lotteries organised by the Government of India or the Government of a State'. Entry 34 of List II of VII, Schedule is, 'Betting and gambling'. There is no dispute before us that the expression 'Betting and gambling' included and has always been understood to have included the conduct of lotteries. Quite obviously, the subject 'Lotteries organised by the Government of India or the Government of a State' has been taken out from the legislative field comprised by the expression 'Betting and gambling' and is reserved to be dealt with by Parliament. Since the Subject 'Lotteries organised by the Government of India or the Government of a State\*' has been made a subject within the exclusive legislative competence of Parliament, it must follow, in view of Art, 246 (1) and (3), that no legislature of a State can make a law touching lotteries organised by the Government of India or the Government of a State'.

'Therefore, the Government of a State has the right to conduct lotteries subject to legislation by Parliament. Since there is at present no legislation by Parliament in

the subject of 'Lotteries organised by the Government of India or the Government of a State', the Government of every State has the unrestricted right to organise lotteries of its own.'

3.2 In SUMAN ENTERPRISES, the Supreme Court laid down the following basic and essential characteristics of a State organized lottery:'

(a) The lottery tickets which bear the imprints and logo of the State must be printed by the State Government or directly at the instance of the State Government, so as to ensure its authenticity and genuineness and to ensure that any possibility of duplication of tile tickets and sale of fake tickets is provided against and rendered impossible;

(b) The State itself must sell the tickets, though, if it thinks necessary or proper so to do, through a sole distributor or selling agent or several agents or distributors under terms and conditions regulated by the agreement reached between the parties.

(c) The sale proceeds of the tickets either sold in retail or wholesale, shall be credited to the funds of the Government.

(d) The draws for selecting the prise winning tickets must be conducted by the State itself, irrespective of the size of the prize money.

(e) If any prize money is unclaimed or is otherwise not distributed by way of prize, it. must revert to and become the property of the State Government.

The Supreme Court while declaring that no State can interfere or regulate the lotteriesorganised by other State Governments, has indicated that the Lottery organising State should make an application to the Statewhere it decides to sell the lottery tickets, so that the concerned State Government can examine the application in the light of, the criteria laid down by the Supreme Court and make an appropriate order as to whether the lottery of the organising State qualifies for being reckoned as a lottery organised by the State; and if the affected State comes to the conclusion that the Lottery is a State organised lottery, it shall declare and notify that the tickets in respect of such lottery could be sold. It is

made clear that such examination is not with the intention of regulating the sale of such lottery ticket, but to ensure it falls under the category of State organised lotteries'. It follows therefore that if the affected State comes to the conclusion that the 'lottery' does not answer the required characteristics, it can either prohibit or regulate the sale of such tickets.

4. The First Petitioner made an application dated 8-3-1995 (Annexure 'B'), seeking permission from the First Respondent to allow the sale of Goa State Lottery tickets, giving the necessary particulars. The First Respondent by letter dated 10-10-1995 (Annexure 'D') informed the First Petitioner that it had no objection for sale of instant lottery tickets run by Government of Goa State, in Karnataka. However, subsequently, by a letter dated 29-2-1996 (Annexure 'E'), the First Respondent informed the first Petitioner that the matter was re-examined and it was found that instant lottery had an adverse social effect and therefore, permission given to First Petitioner in the earlier letter dated 10-10-1995 to sell instant lottery tickets in Karnataka was withdrawn with immediate effect. The First Petitioner thereafter gave a representation dated 13-3-1996 seeking reconsideration. As there was no response, the petitioners have filed these Petitions for quashing Annexure 'E' dated 29-2-1996 and seeking a direction to Respondents not to interfere with the sale of lottery tickets of the First Petitioner, in the State of Karnataka.

5. The first Respondent contends that even though it may not be able to regulate or restrict sale of tickets relating to a 'lottery' organised by another State, it has the power to regulate betting and gambling under Entry 34 of List II. First Respondent contends that if the scheme or arrangement formulated by the first Petitioner did not amount to a 'lottery' organised by a State, it could regulate or prohibit the sale of tickets under such a scheme; and that in this case, the scheme relating to the instant lottery though called as a 'lottery, is in fact, not a 'lottery' and, therefore, it will not be covered by Entry 40 of List I and consequently, it will fall within the regulatory control of the state within whose territories, the tickets are sought to be sold. If it is not a lottery, then it would amount to a species of gambling and if it is found to have adverse social impact, the first Respondent (as affected State), has the power to either restrict or regulate or prohibit the sale of such tickets issued by

the first Petitioner (Organising State), amounting to gambling, either by a legislation or executive action. The first Respondent contends that as the scheme relating to instant lotteries is not a lottery, but is a gaming or gambling other than lottery, it is in its power to refuse permission for sale of tickets of such a scheme, within its territory; and where permission had already been granted, it was also justified in withdrawing the same with immediate effect. Sri Gopal Hegde, learned counsel for Respondents, contended that the scheme of instant lottery organised by the petitioner being a 'Lottery Organised, by a Government of a State', it was covered in Entry 40 of List-I. While Respondents do not dispute that the scheme in question is 'Organised by a Govt. of a State', the first Petitioner does not dispute that if its scheme is not a lottery, the first Respondent can regulate the sale of tickets under the scheme.'

6. Therefore, the only question that arises for consideration is whether the scheme of instant lottery that has been introduced by the first Petitioner under the Goa, State Lottery Rules, 1991, 18 a 'lottery' referred to in Entry 40 of List I or whether it is a form of Betting and gambling' covered by Entry 34 of List II.

7. What is Lottery:

7.1 The term 'Lottery' is not statutorily defined. The general definition of 'lottery' deducible from dictionaries is 'an arrangement or scheme for distribution of prize by lot or chance, among the holders of tickets, without the use of any skill on the part of the participants'. Another definition of lottery is that it is a game of chance in which the participant who becomes the holder of a ticket (or winning chance) by paying a consideration, becomes entitled to a gain or the loss of absolute right to prize/s, determinable by drawing or casting of lot by the organiser of the game. In other words, transactions in which entitlement to prizes by ticket-holder is decided by lots or by chance, amounts to lottery. 'Lottery' has also been defined as a species of gaming wherein prizes are distributed by chance among persons paying a consideration for the chance to win. The Law Dictionaries and Courts have also adopted the terser definition: 'A chance for a prize for a price'. The four essential elements and characteristics necessary to describe any Scheme or arrangement as a lottery, are consideration, prize, chance, and a

Scheme; that is, (a) there shall be consideration flowing from the person participating in the lottery towards the prize fund or to the organiser; (b) there shall be a prize receivable by the participant (holder of the winning chance or ticket) On the occurrence of a contingent event; (c) the entitlement to the prize shall be by drawing of lots or other method, purely by chance and not by use of any skill by the participant; and (d) there shall be a scheme or device by which the participant for consideration is permitted to receive the prize or nothing, as may be determined by chance. If any of the four essential elements is absent, the scheme is not a lottery, regard-less of the motive for the omission, and conversely, if all the elements are present, the scheme will be a lottery regardless of the fact that the purpose of its sponsor is to increase its Revenue/Income. (See CORPUS JURIES SECUN-DUM, Vol. 54 Page 843 Et Seq. Black's Law Dictionary 5th Edition, Page 853; K. J. Aiyar's Judicial Dictionary 11th Edition, Page 719; P. Ramanatha Aiyar's Law Lexi-con(1987 Reprint Edition) Page 755-756; and the Full Bench decision of Madras High Court in Sesha Ayyar v. Krishna Ayyar, AIR 1936 Mad 225.

7.2 The Encyclopaedia Britannica (15th Edition, Volume 11, Page 113) describes lottery as a scheme or procedure for distributing something (usually money or prizes) among a group of people by lot or chance. It is a form of gambling in which a usually large number of people purchase chances, called lottery tickets, and the winning tickets are drawn from a pool composed of all tickets sold or offered for sale. A lottery operation is described thus:-- First, there must be some means of recording the identities of the bettors, the amounts staked by each, and the number or other symbol on which the money is bet. The bettor may write his name on a ticket that is deposited with the lottery organisation for subsequent shuffling and possible selection in the drawing or the bettor may buy a numbered receipt, in the knowledge that this number will be entered into a pool of numbers, the bettor having the responsibility of determining later if his ticket was among the winners.

## 8. Scheme of Instant Lottery.

A typical scheme of instant lottery is as follows:--

8.1 Five lakh tickets in five series (A, B, C, D & E) of one lakh tickets each numbering 1,00,000 to 1,99,999 are printed.

8.2 The 'Instant lottery' results are decided by drawing the winning numbers (of one first prize of Rs. 5.000/-, two second prizes of Rs. 500/- each, five third prizes of Rs.250/- each and 45,000 fourth prizes of Rs. 200/- each to numbers ending with the declared last three digits in all series). The procedure for draw is as follows: There is a machine containing seven drums in a row, six drums for selecting six digit numbers and the last drum for series Number. The first six drums will contain balls bearing numbers 0 to 9. The seventh drum will contain balls engraved with the Numbers of series. The draw is commenced with the rotation of all the drums simultaneously for 10 to 15 seconds, so that the balls get sufficiently shuffled. On halting, a lever will be pulled so that one ball from each drum falls downsimultaneously in respective containers. After the digits of the prize winning numbers are So drawn, they are recorded and authenticated and then duly declared and published in the Official Gazette.

'8.3 The sale of tickets (price of which being Rs. 20/-) commences only after declaration of the results, and will be continued till such last date as fixed by the Director of lotteries.

8.4 Each Agent or sub-Agent will be provided with the Result sheets along with tickets for sale. The tickets will contain the name of the Scheme, price of the ticket, number of the ticket as also the particulars of the draw, including date and time of draw which has taken place, against which the tickets are sold. The number of the ticket is however covered by the coating of special paint which is easily removable by scratching. When the tickets are sold, the number is covered.

8.5 A purchaser, on purchase of the ticket, scratches the 'covering' to the number, and ascertains the number of the ticket. He can immediately verify with the displayed Result Sheet and find out whether his ticket is entitled to any prize. All prizes (Rs. 5,000/-below) can be claimed and received from the Second petitioner (who is the sole Distributor of the State of Goa) or from their Authorised Agents. The winner can immediately claim the prize from the Agent/Sub-Agents from whom he purchased the ticket. There is no need to wait for any draw or to get the prize money, as in the case of the traditional lotteries.

8.6 The petitioners contend that the above instant lottery scheme satisfies the four requirements of a lottery relating to Price, Prize, Chance and Scheme; and being a 'lottery' organised by a State, cannot be regulated by any other State.

## 9. Whether Instant Lottery is a lottery:

9.1 At the outset, it should be borne in mind that the term 'lottery' has to be understood in the context and sense in which the same has been used in Entry 40 of List I. Any loose meaning that may be attached to the term 'lottery' is not intended to be incorporated into the meaning a lottery, for the purpose of Entry 40. This may be illustrated by the meaning of the word 'lottery' given in Collins Cobuild English Dictionary (1995 Edition Page 991):--

Lottery: A Lottery is a type of gambling game in which people buy numbered tickets. Several numbers are then chosen and the people with those numbers on their tickets win a prize.

The Dictionary also refers to the usage of the word Lottery as referring to anything which involves luck or chance in the following manner:

'If you describe something as 'a lottery', you mean that what happens depends entirely on luck or chance ..... The stock Market is a lottery'..... 'which Judges are assigned to a case is always a bit of a lottery'.

9.2 Several Governments have used lotteries as an easy and simple, though controversial, means for raising money. Particular reference may be made to Italy and England who started State run Lotteries in 16th and 17th centuries. The word 'Lotteries Organised by the Government of a State' in Entry 40 of List I should therefore be understood in the context of lotteries that were being run by several governments as a source for mobilising funds for definite causes. Consequently, the existence of the four ingredients of Scheme, Price, Prize and Chance should necessarily be present before a scheme can be considered as a lottery for the purpose of Entry 40 of List I.

9.3 A lottery has always been identified as a gambling game in which people buy numbered tickets and then several numbers are chosen and the people whose

tickets bear those winning numbers get prizes. When a person buys a lottery ticket, he purchases a chance to win a prize, i.e. he has also the other purchasers of tickets, will participate -in a draw which will be held on a specified date before which the tickets would have been sold and the persons possessing the tickets with the winning numbers are given the prizes. This clearly indicates that in a lottery, the selection or drawing of the winning numbers is always after the sale of tickets. There will be no sale of tickets after the drawing of the winning numbers.

' 9.4 But there is a fundamental difference in an instant lottery. In an instant lottery, there is no drawing of lots to determine the winning ticket from among several ticket holders. In an instant lottery, there is a predetermined list of winning ticket numbers. The organiser first declares the numbers which are entitled to prizes. The organiser holds out that any person purchasing a ticket with the declared numbers will be given the prize immediately. It is after such declaration of the winning numbers, that the sale of tickets are commenced. Thus, on the day when the tickets are sold, winning a prize is not contingent upon the number being selected in a subsequent draw. The winning numbers would have already been declared and the list is displayed by the Agents who sell the tickets. The participant in the instant lottery purchases a ticket (with the number covered) and rubs or scratches away the covering so as to disclose the number and if the number finds a place in the winning list, he immediately gets the prize. Thus the chance of winning is not after the purchase of the ticket, by drawing the winning numbers. The chance of winning or losing is determined by the act of buying the ticket itself and not by any subsequent drawing of the winning number. The moment a ticket is purchased and the number is exposed by scratching the covering, the purchaser knows whether he has won or lost and if won, immediately becomes entitled to the prize. In a traditional lottery a person does not win or lose by the act of purchasing the ticket; he wins or loses when the winning numbers are drawn by the organiser, subsequent the sale of tickets.

9.5 The immediate chance of getting a prize enhances the gambling instincts and turns the participant in to an addict. While a new form of gambling which is intended to replace a less desirable form of gambling, and answering the requirements of a 'lottery' may be unexceptionable, a new form of gambling, under

the guise of 'lottery', which does not fulfil the essential requirements of a lottery, and which increases the gambling instincts and makes the participants addicted to gambling, can certainly be prevented by a State. Each sale of ticket in an instant lottery, is a wagering or betting contract between the organiser and the purchaser of the ticket, with the significant absence of selection of the winning ticket from among the several ticket holders by drawing lots. One of the four requirements, that is, selection of the winner from among the several ticket holders, by a process which is purely one of chance, is missing in an instant lottery. The contention that winning numbers are selected by drawing the numbers purely by chance is of no relevance; the selection is made before the commencement of sale of tickets and no one holds any winning ticket at the stage of selection of winning numbers. Though the winning numbers declared in an instant lottery may be selected by adopting a procedure similar to a draw in the case of conventional lotteries, it should be remembered that the drawing of numbers in an instant lottery is not from among the numbers of the tickets already sold to the participants; when the winning numbers are determined in an instant lottery, not even a single participant will be holding a ticket under the scheme. Therefore, the scheme relating to instant lottery, though called as a 'lottery', is in fact, not a lottery, but a pure and simple form of gambling betting.

9.6 A transaction where the organiser says pick up a ticket with the numbers that have been declared and I will give you a prize immediately and if you do not pick up a ticket with the declared numbers, you lose your money, can not be considered as a lottery. In such an arrangement, the person who sells the ticket virtually runs a gambling house or a gaming house, because he sells the ticket which is acceptance of the bet, and he pays the prize to the ticket holder immediately, if the ticket has one of the declared numbers. By no stretch of imagination an instant lottery can therefore be identified or equated to the conventional lottery where the determining event for acquiring the prize is the drawing of lots, after the completion of sale of the tickets, by pure chance. Hence it has to be held that instant lottery is not a lottery, but a species of betting and gambling which falls under Entry 34 of List II.

## **CONCLUSION**

10. 'Instant lottery' is not a lottery, it does not fall under Entry 40 of List I and petitioners cannot claim the benefit of the decisions of the Supreme Court in Anraj and Suman Enterprises which dealt with lotteries. The State Government has therefore power to regulate or even prohibit the sale of tickets in the schemes known as instant lotteries. The action of the State Government prohibiting sale of instant lotteries cannot, therefore, be found fault with. The prayer seeking a direction to Respondents not to interfere with sale instant lottery tickets by petitioners, is rejected.

11. It is no doubt true that the State Government had earlier given permission to the first petitioner to sell tickets of instant lotteries in Karnataka. But once it examined the position and found that it was having an adverse social impact, it has refused permission. As public interest required that sale of such tickets should be stopped it was done so without hearing the petitioner. The learned Government Advocate, however, made it clear that if the first petitioner wanted an opportunity to explain its position or wanted a hearing in the matter in connection with the withdrawal of the permission already granted, the first respondent is willing to give a post facto hearing. It is contended that having regard to the serious social impact and having reached a decision that instant lottery was not a species of lottery, but a species of gambling other than lottery, they were entitled to take immediate steps for stopping the same.

12. In view of the above, it is open to the first petitioner to give its representation in the matter. After considering such representation, it is for the first respondent to decide whether sale of instant lottery tickets, though not a lottery, should be permitted, or stopped, or permitted with conditions subject to regulation. That is a matter of policy in which this Court will not interfere. Unless the decision taken is modified, the position as on date, that is bar on the sale of the instant lotteries, will continue in force in the State of Karnataka.

13. The learned Additional Government Advocate stated that the respondent are not interfering with the sale of open lottery tickets (that is conventional lottery) by the first petitioner. The said statement is recorded.

Petitions are disposed of accordingly. No costs.

14. Order accordingly.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**