

Reeja Vs. State of Kerala

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Court : Kerala

Decided On : Jun-08-2004

Reported in : 2004(3)KLT599

Judge : K. Balakrishnan Nair, J.

Acts : Lotteries Regulation Act, 1998 - Sections 4, 7(3) and 8; Kerala State Lotteries and On-line Lotteries (Regulation) Rules, 2003 - Rule 24(1) and 24(3); [Constitution of India](#) - Article 19(1)

Appeal No. : W.P.C. Nos. 15556 and 16015 etc. of 2004

Appellant : Reeja

Respondent : State of Kerala

Advocate for Def. : Rajan Joseph, Addl. Adv. General

Advocate for Pet/Ap. : M.K. Damodaran,; P. Sanjay,; A. Parvathi Menon and;

Judgement :

K. Balakrishnan Nair, J.

W.P.(C) No. 16221/04

1. The petitioner has approached this Court, seeking inter alia, a direction to the respondents to allow her to open her shop and to sell the tickets of on-line

lotteries of the States of Sikkim, Karnataka and Arunachal Pradesh. The brief facts of the case, as stated by the petitioner, are the following :

2. The petitioner is running a retail outlet of M/s. Playwin, which is the sole selling agent of M/s. Tashi Dalek Gaming Solutions Pvt. Ltd., M/s. Ultra Entertainment Solutions Pvt. Ltd. and M/s. Kenlot Gaming Solutions Pvt. Ltd., who are the marketing agents of online lottery tickets of the States of Sikkim, Karnataka and Arunachal Pradesh. The petitioner was running the said retail outlet from 30.8.2002. The room, housing the retail outlet, was also being used for the sale of packaged drinking water Bislery and Valvoline Lubricants, Oils Filters etc. The State of Kerala, by framing the Kerala State Lotteries and On-line Lotteries (Regulation) Rules, 2003, tried to regulate the lotteries of other States.

3. The said Rules were challenged before this Court, by the above said marketing agents, by filing W.P.(C) No. 35368/03. Though the learned Single Judge dismissed the said W.P.(C), a Division Bench of this Court, by Ext.P1 order dated 19.12.2003 in W.A. No. 2044/03, stayed the operation of Sub-rules (3) and (10) of Rule 24 of the above mentioned Rules. Sub-rule (3) provides that the sale of tickets of a lottery of another State without the permission of the State Government, is prohibited. Sub-rule (10) enables the State Government to temporarily suspend the sale of tickets of the lotteries run by other States. Later, the Division Bench dismissed the said appeal by judgment dated 28.4.2004.

4. On the basis of the said Judgment, the petitioner stopped the sale of tickets on 29.4.2004. While so, respondents 2 and 3 came to the shop of the petitioner and forcibly sealed the retail outlet. Though the petitioner requested those respondents to show the authority, under which they acted, they did not respond. The 3rd respondent acted on the basis of the complaint filed by the 2nd respondent, it is alleged. By sealing the entire shop-room, the petitioner was prevented from continuing her business of sale of Bislery drinking water, lubricants etc. Against the judgment of the Division Bench of this Court, S.L.P. No. 9394/94 was filed before the Honourable Supreme Court. The Apex Court granted leave to appeal and passed Ext.P2 interim order on 17.5.2004, directing that 'the interim order, which was operating during the pendency of the proceedings before the High Court, will

continue'.

5. In view of the order passed by the Honourable Supreme Court, the petitioner prays for a direction to open her shop-room, so that she can continue her business of selling on-line lottery tickets without interference from any quarters. It is submitted, the petitioner has suffered substantial loss, as a result of the closure of her shop-room. It is also pointed out that the above action was taken under Sub-rules (3) and (10) of Rule 24. The continuance of the said action of respondents 2 and 3, even after the passing of Ext. P2 order, is illegal and unauthorized, it is submitted. The petitioner submitted Ext. P3 representation before the 2nd respondent, praying that the shop-room may be opened and she may be permitted to run her business. Even after the filing of Ext.P3, it is submitted, the respondents did not allow her to run her business. She attacks the aforementioned commissions and omissions of the respondents on the following grounds:

6. The 2nd respondent has no authority to close down the business of the petitioner. The business was closed down, relying on Sub-rules (3) and (10) of Rule 24 of the Kerala Lotteries and On-line (Regulation) Rules, 2004. Now, the operation of those Rules has been stayed by the Apex Court! The respondents have no power or authority to interfere with the business of the petitioner. It is submitted, the impugned action of the respondents is violative of the law laid down by the Honourable Supreme Court in various decisions and the same violates the fundamental rights of the petitioner, guaranteed under Articles 14, 19 and 21 of the [Constitution of India](#) and also the constitutional provisions under Articles 248, 298, 301, 302 and 303. It is submitted that the retail outlets, which were sealed pursuant to the Division Bench Judgment, were permitted to be opened, in the light of Ext.P2 interim order of the Honourable Supreme Court, in other places. Only in Malappuram district, the arbitrary and discriminatory stand is continued. At any rate, the respondents have no authority to prevent the sale of drinking water Bisleri, Lubricants, Oil, Filters etc., it is submitted.

7. On the above grounds, the following reliefs are sought in this Writ Petition:-

(i) issue a writ of mandamus, directing respondents to de-seal the counters of the petitioner.

(ii) issue a writ of mandamus, directing respondents not to interfere with the business of the petitioner and

(iii) declare that the petitioner is entitled to continue the business of selling on-line lotteries peacefully without any interference from the respondents.

8. Respondents 1 and 2 have filed a counter affidavit. It is stated in the counter affidavit that what has been stayed is only the operation of Sub-rules (3) and (10) of Rule 24, The provisions of Lotteries (Regulation) Act, 1998, are not under challenge.

Therefore, if any lottery is conducted, contrary to the provisions of Section 4 to the Act, it is a cognizable and non-bailable offence, which is punishable under Section 7 of the Act. Therefore, the competent Police Officer can proceed against the persons, the Governments and their Officers, violating Section 4 of the Act. It is submitted that the lotteries, the tickets of which are sold by the petitioner are conducted by the concerned State Governments in violation of Section 4 (a), (b), (d), (g), (e) and (h) of the Act. It is also submitted that the Director of Lotteries has filed complaints before the respective Police Stations, for taking action against the petitioner and others, for violating the provisions of Section 4 and thereby committing an offence under Section 7 of the Act. Investigation is not completed in those cases. Therefore, seizure of the computer and other machinery, used for the sale of tickets, is absolutely necessary. They are material objects in those cases. It is also submitted that the All Kerala On-line Lottery Dealers and On-line Lottery Association and others have filed W.P. (C) No. 9693/04, seeking a direction to the Government and other Officers, not to interfere with the sale of tickets of lotteries, organised and conducted by other States. The said Writ Petition was dismissed and no S.L.P. has been filed against it, before the Honourable Supreme Court. It is also submitted that the motion made by persons similarly placed, like the petitioner, before the Honourable Supreme Court, for de-sealing their retail outlets, was not granted by the Apex Court. It is further submitted that the petitioner was selling the tickets of on-line lotteries and other State lotteries, conducted in violation of the Lotteries (Regulation) Act. The allegation of the petitioner that she has suffered substantial loss, owing to the closure of the outlet, is denied. It is also

submitted by the respondents that though other articles like Bisleri drinking water, lubricants, oil etc., were handed over to the petitioner by the 2nd respondent, she declined to receive them. It is submitted that action is being taken only against the lotteries, which are being conducted in violation of the Lotteries (Regulation) Act, 1998. So respondents 1 and 2 pray for the dismissal of the Writ Petition.

9. The petitioner has filed a reply affidavit, reiterating the contentions in the Writ Petition and denying the allegations in the counter affidavit filed by the respondents.

10. Heard Mr. M.K. Damodaran, learned Counsel for the petitioner and the learned Additional Advocate General Mr. Rajan Joseph, appearing for the respondents. They reiterated their respective contentions. The learned Counsel for the petitioner submitted that no crime has been registered against the petitioner. The said submission is disputed by the learned Additional Advocate General. The learned counsel for the petitioner further submitted that in view of the resurrection of Ext.P1 order with the passing of Ext.P2 order by the Apex Court, the respondents are restrained from proceeding against the petitioner under Section 7 of the Act. To support this submission, reliance is placed on the last but one sentence in Ext.P1, which reads as follows:-

'This order will not prevent the competent authorities from taking any action against the appellants or their agents under the provisions of any other law.'

By necessary implication, submits the learned Counsel for the petitioner, action for alleged violation of any of the provisions of the Lotteries (Regulation) Act, 1998, is prohibited. The State Government can prosecute the petitioner under Section 7 of the Act, for violation of Section 4 of the Act, if only the lottery run, is prohibited by the Central Government under Section 6 of the Act, it is submitted. Therefore, it is contended that prosecution, if any taken against the petitioner, is unauthorised. The learned Additional Advocate General submitted that what is stayed is only the operation of Sub-rules (3) and (10) of Rule 24 of the Kerala State Lotteries and On-line Lotteries (Regulation) Rules, 2003. If any lottery is conducted in violation of Section 4 of the Act, the Police is competent to proceed against the petitioner and others, for the offence punishable under Section 7 of the Act, it is contended.

11. Before going to the points to be decided in this Writ Petition, I think, it will be appropriate to refer to the law, governing lotteries, in force in the country, before and after the passing of the Lotteries (Regulation) Act, 1998. Lottery is a form of gambling. Indulging in gambling was always considered to be a vice and pernicious conduct in this country. Manu, in Chapter IX of Manusmriti, commands prohibition of gambling and betting. The relevant verses are 221, 222, 226 and 227, the translation of which reads as follows:-

'(i) The King should prohibit gambling and betting. These two vices cause the destruction of the kingdom.

(ii) Gambling and betting amount to open theft. The King should always exert himself in suppressing both of them.

(iii) If such persons dwell in the kingdom, they constantly harass his good subjects.

(iv) In a former kalpa, this vice of gambling has been seen to cause great enmity; a wise man, therefore, should not practice it even for amusement.'

Verse 228 of the said Chapter provides for the punishment for gambling and betting, which reads as follows:-

'Every person who indulges in these two vices (gambling and betting) should be punished by the king by imposing any penalty at his discretion.'

But, later law-givers like Katyayana and Yajnavalkya propagated the Regulation of gambling by the King, if the same cannot be stopped, Chanakya also took this practical view of providing for regulation of gambling and collecting a fee from the gamblers. Verses 935 to 939 of Katyayana Smriti read as follows :

'If gambling cannot be stopped in the kingdom, it shall be regulated. Gambling should be allowed to be carried on openly in the gambling hall (the hall licensed for the purpose).

The gambling hall should be provided with an ornamental arch to indicate that it is a gambling hall, so that respectable men may not mistake the nature of the place. The King should impose tax on gambling and make it a source of income.

Gambling could be carried on openly after payment of tax to the King.'

The Constitution Bench of the Honourable Supreme Court, in *State of Bombay v. R.M.D. Chamarbaugwala* (AIR 1957 SC 699), considered the entire gamut of law on gambling in India, including those prevailed in ancient India, while considering the constitutional validity of Bombay Lotteries and Prizes Competitions Control and Tax Act and held that the right to run a lottery is not a fundamental right under Article 19(1)(g) of the [Constitution of India](#). The relevant portion of the said judgment reads as follows:-

'The question arises whether our Constitution makers ever intended that gambling should be a fundamental right within the meaning of Article 19(1)(g) or within the protected freedom declared by Act. 301.

(37) The avowed purpose of our Constitution is to create a Welfare State. The directive principles of State policy set forth in Part IV of our Constitution enjoin upon the State, the duty to strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life. It is the duty of the State to secure to every citizen, men and women, the right to an adequate means of livelihood and to see that the health and strength of workers, men and women and the tender age of children are not abused, to protect children and youths against exploitation and against moral and material abandonment.

It is to be the endeavour of the State to secure a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities, to protect the weaker sections of the people from social injustice and all forms of exploitation, to raise the standard of living of its people and the improvement of public health. The question canvassed before us is whether the Constitution makers who set up such an ideal of a Welfare State could possibly have intended to elevate betting and gambling on the level of country's trade or business or commerce and to guarantee to its citizens, the right to carry on the same. There can be only one answer to the question.

(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 say

'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 upto the home of others.

11. Play not with dice : no, cultivate thy corn land. 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. Manu forbade gambling altogether. Verse 221 advises the King to exclude from his realm, gambling and betting, for those two vices cause the destruction of the Kingdom of princes. Verse 224 enjoins upon the King, the duty to corporally punish all those persons who either gamble or bet or provide an opportunity for it. Verse 225 calls upon the King to instantly banish all gamblers from his town.

In verse 226, the gamblers are described as secret thieves, who constantly harass the good subjects by their forbidden practices. Verse 227 calls gambling, a vice causing great enmity and advises wise men, not to practice it even for amusement. The concluding verse 228 provides that on every man, who addicts himself to that vice either secretly or openly, the King may inflict punishment according to his discretion.

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,

He says: 'It is an abomination to play at chess, dice or any other game; for if anything is staked it is gambling, which is expressly prohibited in the Koran; or if on the other hand, nothing be hazarded it is useless and vain. The wagering contracts of the type which formed the subject-matter of the case of Ramloll v. Soojunmull (4 MOO Ind App 339 (PC)(Y)) and was upheld by the Privy Council as not repugnant to the English Common law were subsequently prohibited by Act XXI of 1848, which was enacted on the suggestion of Lord Campbell made in that case and introduced in India, provisions similar to those of the English Gaming Act (8 & 9 vict.c. 109).

Bengal Gambling Act (Ben. Act 2 of 1867) provided for the punishment of public gambling and the keeping of common gaming house in the territories subject to the Lieutenant Governor of Bengal. Lottery has been, since 1870 made an offence under Section 294A of the Indian Penal Code. Gambling agreements have been declared to be void under the Indian Contract Act, 1872 (Section 30), This, in short, is how gambling is viewed in India

(42) It will be abundantly clear from the foregoing 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 Article 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 Article 301. It is not our purpose nor is it necessary for us in deciding this case to attempt an exhaustive definition of the words '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 Articles 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 Article 19(1)(g) or Article 301 of our Constitution.'

12. During subsequent years, the conduct of lottery and the malpractices behind it, were the subject matter of several decisions of the Honourable Supreme Court. The Apex Court, in *State of Haryana v. Suman Enterprises* ((1994) 4 SCC 217), issued certain directions for organising State lotteries. On finding that the said directions of the Apex Court failed to curb the malpractices in the conduct of Lotteries, the Union of India issued the Lotteries (Regulation) Ordinance, 1997 on 1.10.1997. Later, the Parliament enacted the Lotteries Regulation Act, 1998. The statement of objects and reasons of the said Act is given below:

'The conduct of certain types lottery trade in the country, the malpractices thereof and their impact on the poorer sections of the society have been under scrutiny of the Government for quite some time. The continued prevalence of the popularly known single digit and instant lotteries and the temptation offered by them proved to be the undoing of many families, especially poor daily wagers and low income groups.

2. In spite of the guidelines issued by the Central Government over a period of time as also the guidelines issued in the recent past by the Honourable Supreme Court in the matter, the evil has not been totally eliminated and it is felt that a Central legislation to regulate the conduct of lotteries is necessary to protect the interest of the gullible poor.'

The objects and reasons would show that the evil of malpractices in the conduct of various types of lotteries and its impact on poorer sections of the people have persuaded the enactment of this legislation. Section 3 of the Act prohibits the State Governments from organising, conducting or promoting any lottery, save as otherwise provided in Section 4. Section 4 reads as follows :

4. Conditions subject to which lotteries may be organised etc.:-- A State Government may organise, conduct or promote a lottery, subject to the following conditions, namely:-

(a) prizes shall not be offered on any pre-announced number or on the basis of a single digit.

(b) the State Government shall print the lottery tickets bearing the imprint and logo of the State in such a manner that the authenticity of the lottery ticket is ensured.

(c) the State Government shall sell the tickets either itself or through distributors or selling agents.

(d) the proceeds of the sale of lottery tickets shall be credited into the public account of the State.

(e) the State Government itself shall conduct the draws of all the lotteries.

(f) the prize money unclaimed within such time as may be prescribed by the State Government or not otherwise distributed, shall become the property of that Government.

(g) the place of draw shall be located within the State concerned. (h) no lottery shall have more than one draw in a week.

(i) the number of all kinds of lotteries shall be conducted between such period of the day as may be prescribed by the State Government.

(j) the number of bumper draws of a lottery shall not be more than six in a calendar year. (k) Such other conditions as may be prescribed by the Central Government.'

Section 7 contains the penal provisions. If any lottery is conducted by any State Government, in violation of any other provisions of the Act, the Head of the Department shall be punished either with rigorous imprisonment for 5 years or with a fine or with both under Section 7(1). If any offence under the Act is committed by any Officer other than the Head of the Department, he is also liable to be prosecuted and punished under Sub-section (2) of Section 7. If any person acts as an agent or promoter or trader in any lottery organised, conducted or promoted in contravention of the provisions of the Act or sells, distributes or purchases the tickets of such lottery, he shall be punishable with rigorous imprisonment for two years or with fine or with both under Section 7(3). Section 8 makes the offence under the Act cognizable and non-bailable. Section 5 enables the State Government to prohibit the sale of tickets of a lottery, organised or conducted or promoted by every other State. But, the said provision has been read down by the Apex Court in *B.R. Enterprises v. State of U.P.* ((1999) 9 SCC 700), to mean that a State Government which is not running a lottery alone, is competent to prohibit the sale of tickets of lotteries run by other State Governments. Section 6 enable the Central Government to prohibit the lottery organised, conducted or promoted in contravention of Section 4 or if the tickets of such a lottery are sold in contravention of the provisions of Section 5.

13. In exercise of the power conferred by Section 12 of the Act, the Kerala Government have issued Kerala State Lotteries and On-line Lotteries (Regulation) Rules, 2003. Rule 24 (3) provides that no lottery shall be marketed in the State, unless permission for the same is received from the Secretary to Government (Taxes Department) under Sub-rule (1). Sub-section (10) of Rule 24 enables the State Government to temporarily suspend the sale of lottery tickets in the State, if the Government are satisfied that any lottery is organised conducted or promoted by another State, in contravention of the provisions of the Act and to report the

matter to the Government of India, for passing final order under Section 6 of the Act.

14. Going by the above scheme of the Act, the point to be decided is whether respondents 2 and 3 can proceed against the petitioner, if the lottery, the tickets of which are sold by her, is organised in contravention of the provisions of Section 4 of the Act. The contention of the petitioner, which was noticed earlier, is that in view of Exts.P1 and P2 interim orders, the State or its agencies have no power or authority to interfere with the sale of lottery tickets by the petitioner. The said contention cannot be accepted. Section 4 of the Act is very much alive and kicking. No Court has stayed the said provision. Any violation of Section 4 of the Act is a cognizable offence under Section 8. That means, upon receiving information, the Police can register a crime and investigate the offences under Section 4. For the said purpose, the Police Officer is competent to seize the computers or any other instrument used for running the lottery. They are material objects involved in the criminal case. If the lotteries are run strictly in accordance with the stipulations contained in S,4, then of course, the Police or any other enforcing agency has no power to interfere with the sale of tickets of such lotteries. What have been stayed earlier by this Court and presently stayed by the Apex Court, are only the provisions of Sub-rules (3) and (10) of Rule 24 of the Rules. Therefore, the interpretation given to the last but one sentence in Ext.P1 by the learned Counsel for the petitioner that action under all other provisions of the Act is also prohibited, is plainly untenable.

15. It is trite law that running lottery will tantamount to indulging in gambling. No-one has any fundamental right under Article 19(1)(g) to engage in the business of running a lottery. By regulating the lottery, the State is not violating any of the Constitutional provisions, as alleged by the petitioner. The running of a lottery can only be done strictly observing the provisions of the Act. The Police have the power to prosecute the Officers of the State Government concerned and also the persons selling those tickets here. The said power is a power coupled with a duty, which has to be exercised promptly and effectively. No-one responsible for the conduct of a lottery, which is being conducted in violation of Section 4 of the Act and no-one who sells the tickets of such a lottery shall be spared. Even the

persons who purchase the tickets can be prosecuted under Section 7(3) of the Act.

16. The allegations of fraud and manipulation in the conduct of the lotteries are rampant. Some of them have been summarised by Dr. Arun Kumar Barthakur, a learned Advocate of the Bombay High Court in an article published in the Journal Section of (2003) 2 SCC. I think, it will be fruitful to quote the relevant portion of the said article dealing with the allegations against on-line lotteries, which reads as follows: -

'The statistics also reveal yet another shocking state of affairs as to how by a clever invention, the State Governments themselves are deliberately setting at nought the objects of the 1998 Act. Taking cognizance of the evil effects of the temptation offered by the single-digit and instant lotteries, especially on the poor gullible daily-wagers and low-income groups, Parliament has prohibited the single-digit lotteries by enacting Section 4(1) and conducting more than one draw in a week of any lottery by enacting Section 4(h). Similarly, by enacting Section 4(1), Parliament has made it mandatory to conduct draws of all kinds of lotteries between such periods of the day as many be prescribed by the State Government. However, the Governments of Arunachal Pradesh, Mizoram and Maharashtra have devised an amazing strategem to circumvent the provision of Section 4(h) to continue the daily lotteries - coupled with multiple draws. The Government ' of Arunachal Pradesh is selling tickets with the words 'weekly lottery' printed therein in microscripts, detectable only with an endeavour by the inquisitive eye. On such tickets, daily seventy draws are being conducted each at the interval of every 15 minutes from 8.15 a.m. onwards to the unseemly hour of 9.15 p.m. in the night; and every fifteen minutes, the results for every draw are instantly conveyed on pagers to the selling clerks of the booths. Every ticket is given a different name such as, 'Pahila Daw' for the 8.15 a.m. draw, 'Tea-time Morning' for the 8.30 a.m. draw and so forth, with the penultimate draw for 9 p.m. being named 'Akhri Sapna' and the last draw for 9.15 p.m named 'Parasmani Yatra'. One draw is even called 'Matka' and in some hours in the day, there are even two draws at the same time. No ticket is sold in advance, not does anyone demand the next day's tickets; tickets are being sold across the counters continuously only for the current draws

one after another. Law specifically bans sale of one-digit lotteries. But, the statutory prohibition appears to have been circumvented by conducting the draws only on the basis of the last two digits, where only the last but one digit is the winning number. Otherwise, there is no earthly reason why the winning digit happens to be the last but one digit of a ticket number and every punter is a sucker for it. One more thing needs to be underlined : the law requires the draw of every lottery to be conducted within the State. But the difference in the local time between Arunachal Pradesh and Mumbai being about one and a half hours, if it is 9.15 p.m. at Mumbai, it would be around 10.45 p.m local time at Itanagar. First, it is extremely unbelievable that the Directorate of State Lotteries in Arunachal Pradesh works deep into the night. Second, even if they do so, it would be flagrant violation of Section 4(i), which makes it mandatory to conduct draws of all kinds of lotteries between such periods of the day as may be prescribed by the State Government. It is also quite intriguing how the Government of Arunachal Pradesh could achieve the brilliant feat of instantly furnishing the results of each draw at the end of every fifteen minutes. The Government of Mizoram adopts the same modus operandi. The Government of Maharashtra is also daily conducting twenty-four draws for its two-digit lotteries camouflaged as weekly lotteries from 9.15 a.m. to 8.45 p.m. with the same modus operandi. The close similarity in operation of these lotteries leads to the conclusion that the dealers are calling the tune with the connivance of the State Government officials. Evidently, there appears to be something seriously hanky-panky associated with these lotteries. These facts serve as testimony to the absolute absence of any regulatory mechanism for these lotteries and the complete failure of the 1998 Act. One thing is certain; the officers concerned of the States are patently liable under the penal provision of Section 7 of the Act.

One has just to visit one of the ubiquitous crowded lottery booths in Mumbai and Pune to be instantly convinced of how the temptations offered by these lotteries are proving to be the undoing of many families, especially, the improvident poor daily-wagers and low-income groups. As a marketing ploy, some of the lottery booths are even furnished with cable TVs and adjoining snack bars where the improvident punters hang around the entire leisure time or the whole day on some days repeatedly staking their hard-earned wages on the multiple draws of the daily

lotteries persistently hoping for fortune to suddenly smile on them to make them instantly rich. If there could be large-scale racketeering in non-judicial stamp papers even when they are usually subject to scrutiny by informed people like lawyers and revenue officers in the country, as has only recently been detected by the Pune police, there are demonstrably even stronger reasons to suspect a high incidence of sale of fake tickets to the gullible poorer sections of the society, when the activities of the dealers and the retail agents are not subject to any regulation whatsoever. The Supreme Court has recognised the possibility of such rackets in two of its recent decisions in J. K. Bharati and Suman Enterprises,

This view is also supported by the universally recognized belief that the State-sponsored lotteries inevitably lead to large-scale frauds and crimes and that as the country's dependency on lotteries increases, so does the opportunity for abuse.

The much-hyped Super Lotto of the State of Sikkim is being run by its sole dealer and distributor, a private firm named 'Playwin'. This firm sells the tickets through retail terminals spread across the country, A punter goes to a retailer and selects six numbers from those mentioned in a play slip. The retail agent then inserts the play slip in the terminal and prints out the ticket on custom-made papers with the name of 'Playwin' printed all over it with only a smudgy State logo appearing on it. This does not appear to comply with Section 4(b) of the Act, requiring the State Government to print the lottery tickets bearing the imprint and logo of the State in such manner that the authenticity of the lottery ticket is ensured. As such, the aforesaid device adopted by Playwin does not appear to be foolproof against fraud and hence sale of fake tickets cannot at all be ruled out.'

The above allegations may be or may not be correct, But, they are matters to be enquired into by the law enforcing agencies, including the Police, to ensure that the hard earned money of credulous people is not syphoned away.

17. Having regard to the facts of the case, it is ordered that if no crime is registered against the petitioner for selling the tickets of a lottery, which is conducted in violation of the provisions of Section 4 of the Act, her shop-room shall be opened and handed over to her. If there is a crime registered against her, the Police will be competent to seize the computer and other instruments used for

committing the offence. But, the petitioner will be permitted to run her business of sale of Bisleri drinking water, lubricants, oil etc. It is declared that notwithstanding Exts.P1 and P2, the Police have the power to register criminal cases and investigate them against the Officers of the State Government, for running lotteries, in violation of the provisions of Section 4 and also the persons selling and purchasing the tickets of such lotteries.

The Writ Petition is disposed of as above. W.P.(C) Nos. 15556, 16015, 18547 & 21444 of 2004

18. The case of the petitioners in these Writ Petitions is similar to the case of the petitioner in W.P.(C) No. 16221/04. So, the directions issued in that case will govern these cases also. If no crime is registered against the petitioners, the respondents shall permit opening of their shop-rooms and sale of lottery tickets from them. If they are selling tickets of lotteries conducted in violation of any of the provisions of Section 4 of the Act, the Police can seize the computers and other instruments used for committing the offence. They can proceed against the petitioners and the Officers of the concerned State Government in accordance with law, for committing an offence under Section 4 of the Act.

The Writ Petitions are disposed of as above.

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