

**State of Assam and ors. Vs. State of Rajasthan and ors.**

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**Court :** Rajasthan

**Decided On :** May-03-1996

**Reported in :** 1996(1)WLN651

**Judge :** Anshumanngh, J.

**Appeal No. :** S.B. Civil Writ Petition Nos. 28, 290, 651 and 1451 of 1996

**Appellant :** State of Assam and ors.

**Respondent :** State of Rajasthan and ors.

**Advocate for Pet/Ap. :** Mr. Bajrang Lal Sharma

**Disposition :** Petition dismissed

**Judgement :**

**Anshuman Singh, J.**

1. These four petitions are directed against the order dated 11.12.1995 passed by the State of Rajasthan imposing ban on the sale of Tickets of Lottery within the territory of State of Rajasthan alleged to be 'organized' by the State of Assam, Manipur, Mizoram and Nagaland. Since the controversy involved in all these four petitions is same, they are being disposed of by a common order. The facts giving rise to these four petitions lie in a narrow compass, as under:

S.B. Civil Writ Petition No. 1055/1995 was filed by one Gyan Singh Gurjar against the State of Rajasthan and Ors. praying for issuance of a mandamus directing the State of Rajasthan to impose a ban on Single Digit Lottery organized by the State of Rajasthan. Apart from the said petition, two other writ petitions being numbered as SB Civil Writ Petition No. 1018/1994 Girdhari Singh Bapna v. Union of India and Ors. and SB Civil Writ Petition No. 438/1995 Mahesh Jhalani v. Union of India and Ors. were also filed which have also been disposed of today. In the aforesaid petition of Gyan Singh Gurjar v. State of Rajasthan and Ors., notice was issued to the respondents to show cause as to why the petition may not be admitted and in pursuance of that notice, Mr. BP Agrawal, Advocate General had appeared on behalf of the State of Rajasthan. On 19.5.1995, when the case of Gyan Singh Gurjar was taken up by the Court, the learned Advocate General who was appearing on behalf of the State of Rajasthan made a statement that Single Digit Lottery organized by the State of Rajasthan has been banned by the State Government w.e.f. 1.4.1995. In support of his statement, he referred to a Gazette Speech delivered by the Hon'ble Chief Minister of Rajasthan in para 186 of his Gazette Speech while presenting the budget for the year 1995-96, which runs as under--

186& fiNys dqN le; ls ns'k es py jgh ykVVjh;ks ds ckjs es izfrdz;k, izklr gqbZ gS ljdkj ds /;ku es Hkh bu ykVVjh;ks ls mRiUu leL;k;s vk;h gS eSus dsfUnz; foRr ea=h dk bl ekeys dh vskj /;ku vkdf'kZr djrs gq, fy[kk gS fd dsUnz ljdkj ds Lrj ij jkT;ks dh cSBd cqyk;h tkdj IHkh jkT;ks dh ykVVjh;ks ds IEcU/k es vke lgefr cuk;h tk;s A eS ;g le>rh gwa fd fdlh ,d ;k nks jkT;ks ds }kjk ykVVjh cUn dj nsus ek= ls bl leL;k dk gy IEHko ugh gksxk A fQj Hkh tulk/kkj.k dh Hkkoukvks dks ns[krs gq, eS ;g igy dj jgk gWw fd fnukad 1 vizSy 1995 ls jkT; dh IHkh ,d vadh; ykVVjh;ks dk pyu jkT;LFkku izns'k es cUn dj fn;k tkuk izLrkfor gS A ;fi bls jkT; dsk Hkkjh vkfFkZd gkfu gksxh A ysfdu turk dh Hkkoukvks dk vknj djrs gq, eS jkT;LFkku jkT; es 'kklu dh IHkh ,d vadh; ykVVjht dks cUn dj jgk gw WA vU; jkT;ks ls ,d vadh; ykVVjh;ks ij 20 izfr'kr dh nj ls fcdzh dj ns; gksxk A

2. In view of the above Speech of the Hon'ble Chief Minister of Rajasthan, learned Advocate General urged that SBCW No. 1055/95 Gyan Singh Gurjar v. State and Ors. has become infructuous and the same was dismissed by this Court as having

become infructuous. In the case of Girdhari Singh Bapna v. Union of India and Ors. SBCW No. 1018/94 and Mahesh Jhalani v. Union of India and Ors. (SBCW No. 438/95) prayers were made for issuance of directions to the Union of India not to allow the sale of lottery tickets within the territory of the State of Rajasthan either 'organized' by the State of Rajasthan or by the other States. In view of the said fact, the learned Advocate General was asked to inform the Court about the sale of lottery tickets other than the lotteries of Single Digit organized by the State of Rajasthan.

3. It appears that Finance Department (R & AI Division) Government of Rajasthan issued a notice dated 23.8.95 (Annexure-F) by which, the State Governments were permitted to sale their lottery tickets within the territory of State of Rajasthan for which they are required to obtain prior permission from the State of Rajasthan in case they fulfil the requirements prescribed by the Apex Court in its interim order dated 21.4.94 in Civil Appeal Nos. 2349-51/1994 arising out of SLP (C) No. 6566-68/1004 6566-68/1004 directing the State Governments who intended to sell their lottery tickets within the territory of other States should file application in the prescribed proforma before the respective State Governments which were to be disposed of according to the requirements laid down by the Apex Court in its interim order dated 21.4.94. It appears that in pursuance of the notice dated 23.8.95 issued by the Finance Secretary Government of Rajasthan to the petitioners-States directing them to submit applications in the prescribed proforma, petitioners-States submitted their applications and filled the proforma, as per notice dated 23.8.95 issued by the State of Rajasthan and also submitted their relevant documents such as agreement. Rules relating to lotteries of the petitioners-States.

4. A preliminary objection has been raised on behalf of the respondent-State of Rajasthan regarding maintainability of writ petitions on the ground that the jurisdiction of this Court is barred under Article 131 of the Constitution of India. However, for deciding the preliminary issues raised by Mr. B.P. Agrawal, Advocate General appearing for State of Rajasthan the Court directed that the matter shall be heard on the preliminary objection as well as on merits and shall be disposed of finally at the admission stage itself to which the learned counsel for the parties

agreed.

5. I have heard Mr. S.M. Mehta, Mr. Bajrang Lal Sharma and Mr. Kamla Kar Sharma for the petitioners-states and Mr. B.P. Agrawal. Advocate General for State of Rajasthan and Mr. Alok Sharma for Intervenor. Before entering into the merits of the case. I consider it proper to deal first of all with the preliminary objection raised by the respondents about the maintainability of writ petitions. Mr. B.P. Agrawal, Advocate General contended that remedy available to the petitioners-States is under Article 131 of the Constitution of India before the Apex Court as such, the present petitions are liable to be thrown on this ground alone. Before deciding the question of maintainability, I consider it proper to refer to Article 131 of the Constitution of India, which runs as under :

#### 131. Original jurisdiction of the Supreme Court-

Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute

(a) between the Government of India and one or more States; or

(b) between the Government of India and any State or States on one side and one or more other States on the other: or

(c) between two or more States.

if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:

(Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement covenant, engagement, sanad or other similar instrument which, having been entered into or executed before the commencement of this Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute)

6. From the perusal of the language used in the aforesaid Article, it is amply clear that for invoking the original jurisdiction of the Supreme Court under Article 131 of the Constitution of India, it is necessary that; (i) there must be a dispute between

the Government of India and one or more states; or (ii) between the Government and any State or States on one side and one or more other States on the other: or (iii) between one or more States if the dispute involved any question (whether of law or fact) on which the existence of a legal right depends. It has been urged on behalf of the respondents that since a dispute has arisen between the State of Rajasthan on one hand and the petitioners-States on the other hand about the existence of a legal right, the remedy lies only before the Supreme Court under Article 131 of the Constitution of India and not under the jurisdiction of this Court. The said contention has been hotly contested by Mr. S.M. Mehta and Mr. Bajrang Lal Sharma appearing for the petitioners-States. They have refuted the contention of the Advocate General on the ground that they are aggrieved against the impugned order dated 11.12.95 passed by the State of Rajasthan which is per-se illegal, arbitrary and without jurisdiction. They contended that there is no dispute about the existence of a legal right. In support of their contention they placed reliance on a decision of the Apex Court in the case of Union of India v. State of Rajasthan : [1985]1SCR700 . I have perused the judgment of the Apex Court in the case of Union of India v. State (supra) in which a question was whether a suit filed by the State of Rajasthan against Union of India for recovery of compensation for loss on account of damage caused to the goods, belonging to the State: of Rajasthan dispatched through the Indian Railways is maintainable in a Civil Court at Rajasthan or whether it should have been filed under Article 131 of the Constitution of India before the Apex Court. The ratio laid down by their lordships in the aforesaid case was that a suit filed by the State of Rajasthan against Union of India for recovery of compensation for loss on account of damage caused to the goods, belonging to the State Government, dispatched through the Indian Railways is maintainable in a Civil Court at Rajasthan and as such, the suit is not covered by Article 131 of the Constitution of India which confers the exclusive original jurisdiction on the Supreme Court in respect of dispute covered by that Article. The learned Advocate General contended that the facts of the aforesaid case are entirely different and the law laid down by the Apex Court in the aforesaid case of Union of India v.State of Rajasthan (supra) is not applicable in the facts of the present case. Though, the facts of the aforesaid case is not applicable in the facts of the present case, but the learned counsel for the petitioners-States have

drawn the attention of this Court to the observations made by the Apex Court in para 6 at pages No. 1677 & 1678, which runs as under-

Although Article 131 does not define the scope of the disputes which this Court may be called upon to determine in the same way as Section 204 of the Government of India Act, and we do not find if necessary to do so, this much is certain that the legal right which is the subject of dispute must arise in the context of the Constitution and the Federalism it sets up. However, there can be no doubt that so far as the parties to the dispute are concerned, the framers of the Constitution did intend that they could only be the constituent units of the Union of India and the Government of India itself arrayed on one side or the other either singly or jointly with another unit or the Government of India.

7. On the basis of the aforesaid observations made by the Apex Court, learned counsel for the petitioners-States, urged that in the facts of the present case Article 131 of the Constitution of India cannot be attracted. They submitted that the dispute which is contemplated to be decided under Article 131 of the Constitution of India by the Apex Court, must arise in the context of the rights of the State which flow from the Constitution of India. Thus, according to the counsel in the facts of the present case no such dispute has contemplated under Article 131 of the Constitution of India as dispute has arisen between the petitioners-States and the state of Rajasthan therefore, the jurisdiction of this Court in entertaining petitions under Article 226 of the Constitution of India is not ousted and the petitions are maintainable. In support of the said contention of the petitioners-States, Mr. S.M. Mehta appearing for the State of Mizoram and Nagaland submitted that preliminary objection raised in view of the fact the State of Mizoram filed a writ petition before the Maharashtra High Court under Article 226 of the Constitution of India against the order dated 30.6.95 refusing to grant permission to the State of Mizoram for sale of their lottery tickets in the State of Maharashtra. It has been submitted that on 21.8.95 the Maharashtra High Court issued Rule in writ petitions, but however during the course of hearing of the petitions and for interim directions, observed that it would be desirable that the petition be heard by the Hon'ble Supreme Court, since the guidelines were issued by the Hon'ble Supreme Court and the petitioner ought to apply for transfer to the Hon'ble

Supreme Court. The State of Mizoram therefore, agreed to prefer-petition for transfer before Supreme Court. It appears that in pursuance of the aforesaid observation made by the Maharashtra High Court the petition under Article 139A(1) of the Constitution of India was preferred before the Apex Court, but the said petition was dismissed and the State of Mizoram was directed to get the matter disposed of by the Maharashtra High Court. In view of the said fact, Mr. S.M. Mehta strenuously urged that in case such disputes were to be decided by the Apex Court in exercise of its power under Article 131 of the Constitution of India, the State of Mizoram would not have been relegated to avail remedy under Article 226 of the Constitution of India before the Maharashtra High Court. The learned Advocate General contended that rejection of application under Article 139A(1) of the Constitution of India is not relevant for the purpose of invoking powers conferred under Article 131 of the Constitution of India inasmuch as, no such plea was raised before the Apex Court. In support of his contention that the facts of the case are such in which the petitioners should have approached the Supreme Court under Article 131 of the Constitution of India, placed reliance on a decision of the Apex Court in the case of State of Rajasthan and Ors. v. Union of India : [1978]1SCR1 . In the aforesaid case the question which came up for consideration before the Apex Court was relating to the interpretation of Articles 356, 355 and 174 of the Constitution of India. I have perused the facts of the aforesaid case. The law laid down by the Apex Court in the said case deals with the satisfaction of the President while exercising powers under Article 356 of the Constitution of India. Learned Advocate General has drawn the attention of this Court to the observations made by Hon'ble M.H. Beg CJ. Hon'ble Y.V. Chandrachud J. and Hon'ble S.M. Fazal Ali J. in the case of State of Rajasthan and Ors. v. Union of India (supra) regarding interpretation of Article 131 of the Constitution of India With great respect, I am of the opinion that the facts of the said case are entirely different and the law down by the Apex Court in the aforesaid case is not applicable in the facts of the instant case. The State of Rajasthan by impugned order has not disputed the legal right of the petitioners-State who 'organized' Lotteries. The State of Rajasthan in pursuance of the requirements laid down by the Apex Court in its interim order dated 21.4.94, has examined the lotteries alleged to have been 'organized' by the petitioners-States

and after perusal of the entire material on record has come to the conclusion that the lotteries conducted by the petitioners-States are not in conformity with the requirements laid down by the Apex Court and as such, imposed a ban on the sale of tickets of lotteries of the petitioners-States. In fact, the necessity of examining the lotteries conducted by the petitioners-States arose because of the interim-order dated 21.4.94 passed by the Apex Court in the case of State of Haryana v. Suman Enterprises and Ors. : (1994)4SCC217 . From the facts narrated above. I am of the definite view that neither there is any dispute regarding existence of a legal right between the State of Rajasthan and the petitioners-States nor, there is any dispute regarding any fact between the State of Rajasthan and the petitioners-States because the petitioners-States are aggrieved against the impugned order passed by the State of Rajasthan holding that lotteries of the petitioners-States are not lotteries 'organized' by them. The State of Rajasthan has not disputed the existence of a legal right by impugned order dated 11.12.95. Therefore, I am of the view that the petitioners-States can approach this Court for quashing the impugned order passed by the State of Rajasthan in exercise of its extraordinary writ jurisdiction under Article 226 of the Constitution of India and jurisdiction of this Court is not barred under Article 131 of the Constitution of India. The framers of the Constitution never intended such orders to be challenged before the Apex Court in exercise of its powers under original jurisdiction. Consequently, the preliminary objection raised by the respondents about the maintainability of present petitions filed by the petitioners- States appear to be wholly devoid of merits and deserve to be rejected.

8. As regards merits of the case is concerned, learned counsel appearing for the petitioners-States have vehemently urged that the impugned order passed by the respondent-State of Rajasthan is per-se illegal, arbitrary and without jurisdiction. The main thrust of the arguments of the learned counsel for the petitioners-States is that since the lotteries of the petitioners-States fall under Entry 40 List 1 Schedule 7 of the Constitution of India the central Government alone is competent to legislate and of State Government has legislative or executive power to impose a ban on the sale of tickets of a lottery 'organized' by the Government of India or Government of a State whereas, the State Government has power to legislate under Entry 34 List II Schedule VII of the Constitution of India regarding

'betting and gambling' but the lotteries organized by the Government of India or Government of a State have been specially taken away from the said Entry and have been placed in Entry 40 List I Schedule 7 of the Constitution of India. In support of the said contention, learned counsel for the petitioners-States have placed reliance on a decision of the Apex Court in the case of H. Anraj v. State of Maharashtra : [1984]2SCR440 . The learned counsel for the petitioners-States, urged that the facts of the case of H. Anraj v. State of Maharashtra (supra) and the facts of the present case are squarely the same and in view of the aforesaid decision the impugned order date 11.12.95 passed by the respondent-State of Rajasthan deserves to be quashed. The learned Advocate General appearing for the State of Rajasthan has not controverted the proposition put forth by the learned counsel for the petitioners-States and he frankly and rightly conceded that the lotteries organized by the Government of India or Government of a State has been taken away from the legislative field of the State Legislature and as such, Lotteries 'organized by the States are covered under Entry 40 List I Schedule 7 of the Constitution of India and the State Government cannot impose a ban on the sale of tickets of lottery 'organized' by the Government of India or Government of a State. However, he vehemently urged that the lotteries which are being conducted by the petitioners-States cannot be termed as lotteries 'organized' by the petitioners-States. He submitted that since the lotteries of the petitioners-States are not 'organized' by States, the State Government is fully competent to prohibit the sale of tickets of such lotteries within the State of Rajasthan. The learned counsel for the petitioners-States further submitted that in view of the categorical averments made on behalf of the petitioners-States that the lotteries are 'organized' by these States, it is not open to the respondent-State to hold that the lotteries are not 'organized' by the petitioners-States. From the facts and arguments advanced by the learned counsel for the parties as stated above, it is crystal clear that only controversy which requires to be decided in these petitions by this Court is whether the lotteries conducted by the petitioners- States are in conformity with the requirements as laid down by the Apex Court in its interim-order dated 21.4.94. For appreciating the arguments of the learned counsel for the parties and also for the decision of the case, it is relevant to refer to the requirements laid down by the Apex Court, which run as under-

The first of those requirements is that the tickets which bear the imprint and logo of the State must be printed by or directly at the instance of the State Government so as to ensure their authenticity and genuineness and further to ensure that any possibility of duplication of the tickets and sale of fake tickets is provided against and rendered impossible. Secondly, 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 selling agent or several agents or distributors under terms and conditions regulated by the agreement reached between the parties. The sale proceeds of the tickets either sold in retail or wholesale shall be credited to the funds of the Government. Thirdly, the draws for selecting the prize-winning tickets must be conducted by the State itself Irrespective of the size of the prize money. Fourthly, 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. These, prima facie, appear to be the minimal characteristics of a lottery which can claim to be 'organized' by the State.

9. The learned counsel for the petitioners-States have urged that the lotteries of the petitioners-States are fully in consonance with the requirements laid down by the Apex Court in its interim-order dated 21.4.94. In support of the aforesaid submission they have referred to the contents of agreement entered between the petitioners-States and the sole distributor as well as lottery Rules of the petitioners-States. They pointed out that the material placed by the petitioners-States before the respondents taking into it entirety does not leave any room for doubt that the requirements laid down by the Apex Court in its interim order dated 21.4.94 are wholly complied with and once the petitioners unable to prove that the lotteries conducted by the petitioners-States fulfil the requirements laid down by the Apex Court, the State of Rajasthan has no jurisdiction to impose a ban on the sale of tickets of lotteries of the petitioners-States and the impugned order passed by the State of Rajasthan deserves to be quashed. On the contrary, Mr. B.P. Agrawal Advocate General urged that the submission of the learned counsel for the petitioners-States regarding merit of the case is wholly illusory and devoid of merit and also contrary to the material placed by the petitioners-States on record and as such, the same deserves to be rejected. He submitted that the material placed on record have been fully examined and scrutinized by the State of

Rajasthan and it is on the basis of the perusal of the entire material the respondent-State has recorded a positive finding of fact that the lotteries of the petitioners-States do not fulfil requirements laid down by the Apex Court in its interim order dated 21.4.94 and as such, the order dated 11.12.95 imposing ban on the sale of tickets of lotteries of the petitioners-States within the territory of State of Rajasthan deserves to be sustained. In order to test the correctness of the submission of the counsel for the either side. I consider it proper to refer to the findings recorded by the respondent-State regarding eligibility of lotteries which are alleged to have been 'organized' by the petitioners-States. The most and redeeming feature of the impugned order of the respondent-State is the third and fourth requirements which are to be fulfilled by a State in order to prove that lottery conducted by it, is 'organized' by such State are lacking in the petitioners' case. In order to make it more clear, I would like to mention the aforesaid requirements contained in the interim-order dated 21.4.94 of the Apex Court, which runs as under :

Thirdly, the draws for selecting the prize-winning tickets must be conducted by the State itself irrespective of the size of the prize money.

Fourthly, 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.

10. In the impugned order the respondent-State has recorded categorical finding that the petitioners-States have failed to produce any material before the State of Rajasthan to prove that the draws are drawn by the State itself. On the contrary, even shows that the draws for selecting the prize winning tickets are conducted by the sole distributor. The petitioners-States have also miserably failed to adduce any evidence whatsoever to substantiate that the prize money unclaimed or is otherwise is not distributed by way of prize, reverts back to the State Government. The petitioners-States have also failed to prove that money by way of sale of tickets is ever deposited with the State Government, but it appears that it is retained by the sole distributor. It is also not out of place to mention that the requirements laid down by the Apex Court to be fulfilled by the petitioners-States are not in my opinion, exhaustive and the requirements laid down by the Apex

Court are held to be minimal characteristics of a lottery which can claim to be 'organized' by the State. The learned counsel for the petitioners-States have vehemently urged that interpretation and findings recorded by the respondents are perverse and against the material on record. I find myself unable to accept the said argument as it is untenable in view of the fact that the impugned order is fully supported by the material on record. It is well settled that this Court while exercising its extraordinary writ jurisdiction under Article 226 of the Constitution of India is not supposed to appreciate the evidence and substitutes its own finding. However, I am of the opinion that in the instant case, findings recorded by the State of Rajasthan is a finding of fact which is duly supported by the material on record as such, the contention of the learned counsel for the petitioners-States that finding is erroneous and based on no material, is wholly devoid of merit and is accordingly rejected. The learned Advocate General has also submitted that if the contention of the learned counsel for the petitioners-States is accepted that the finding recorded by the State of Rajasthan is factually incorrect then, this Court may refuse to interfere on this ground alone as the disputed question of facts cannot, be adjudicated upon in writ jurisdiction.

11. I have given my thoughtful consideration to the various contentions raised by the counsel for the parties and have carefully perused the entire material on record. In view of the findings recorded by the State of Rajasthan in its impugned order dated 11.12.95 that the lotteries conducted by the petitioners-States do not fulfil the minimal requirements as prescribed by the Apex Court in its interim-order dated 21.4.94, the lotteries conducted by them cannot be termed as 'organized', I am of the opinion that the impugned order dated 11.12.95 passed by the State of Rajasthan deserves to be sustained and petitioners have miserably failed to make out a case for interference on merits under Article 226 of the Constitution of India.

12. In the result, all four petitions fail and are accordingly dismissed. However, parties shall bear their own costs.