

**IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH AT GULBARGA**

DATED THIS THE 31ST DAY OF JULY 2012

PRESENT

THE HON'BLE MR.JUSTICE DILIP B. BHOSALE

AND

THE HON'BLE MR.JUSTICE L.NARAYANA SWAMY

WRIT APPEAL NO.50380 OF 2012 (GM-POLICE)

BETWEEN

Dilip V. Gandhi
S/o Vijaykumar Gandhi
Aged 58 years
Occ: Business
R/o. Chakka Katta, Gazipura
Gulbarga

...Appellant

(By Shri. Avinash A. Uplaonkar, Advocate)

AND

1. The State
through Superintendent of Police
Police Bhavan
Near Government General Hospital
Gulbarga
2. The State
through Superintendent of Police,
Excise and Lottery
Enforcement – 36
MSIL House, 5th Floor

Cunningham Road
Bangalore-560052

...Respondents

(By Shri. Manavendra Reddy, AGA)

This writ appeal filed u/s 4 of the Karnataka High Court Act, 1961, praying to set aside the order dated 21.11.2011 passed in the writ petition No.82962/2011 by the Single Judge.

This writ appeal coming on for Admission, this day, the court delivered the following:

PC:

This writ appeal is directed against the order dated 21st November 2011 passed by the learned Single Judge in writ petition No.82962 of 2011, whereby he dismissed the petition.

2. The appellant, who is a businessman, in the writ petition had made the following prayers:

- (a) Issue a writ of prohibition by issuing directions to the respondents to permit the petition to run the business by holding that the act and business being declared as legal.
- (b) Issue a writ of certiorari by quashing the order passed by respondent No.1 dated 25.7.2011 in file NO.C-05/DCRB/GBA/2011 as per Annexure-F.

3. Insofar as the first prayer is concerned, in our opinion, it deserves to be rejected outright. The appellant claims to be a franchisee of a Company named "Ezee Online Marketing Private Limited" which is incorporated in the State of Maharashtra. The Company is not coming forward seeking the relief as prayed for in prayer clause (a). The appellant has absolutely no legal right in seeking such declaration. The learned counsel for the appellant could not and did not point out any provision and/or authorisation in favour of the appellant to seek declaration that the business being run by him in this State, is his business. He is only an agent. Thus, the first prayer is rejected.

4. Insofar as the second prayer is concerned, the learned Single Judge, in the impugned order, has quoted the order/letter dated 25th July, 2011 issued by the Superintendent of Police. From the contents of the letter, it appears that during the raid, it was found that the appellant was running an online lottery under the name 'lucky dip' where the receipts were sold and lucky receipts were rewarded with silver coins. Since, according to the respondents, the said act of the appellant falls within the

purview of Lotteries (Regulation) Act, 1998, the order dated 25th July, 2011 was issued. It further appears that the said order/letter was issued in pursuance of the order passed by this Court in writ petition No.80734 of 2011. The learned Single Judge dismissed the writ petition recording the reasons in paragraphs 3 to 6, which read thus:

"3. The petitioner has been running online lottery under the name lucky dip. The lottery tickers are given in the form of receipts for the sale of yantras. The petitioner, after drawing one of the receipts from the lot of receipts depending upon the turn over of business and gives a silver coin on which, the picture of Lord Ganesh is carved.

4. The learned counsel for the petitioner submits that the business carried on by the petitioner does not attract the provisions of Lottery Prize Competition and Control and Tax Act, 1951. Therefore, the I-respondent should not have passed the impugned order directing the petitioner to stop his business.

5. The learned Government Advocate appearing for respondents would submit that the petitioner under the guise of selling yantras and other articles has been drawing lottery almost every half-an hour. Such activities in the State of Karnataka are prohibited under the notification issued by the State Government as per the

Lotteries (Regulation) Act, 1998 with effect from 02.10.1997.

6. On hearing learned counsel for petitioner and learned Government Advocate for respondents and after going through the averments and documents annexed thereto, I am of the opinion that petitioner under the guise of selling yantras has started a lottery scheme which is prohibited under the notification issued by the State Government as per the Lotteries (Regulation) Act, 1998. In the circumstances, there are no grounds to interfere with the impugned order. Accordingly, writ petition is dismissed."

5. The learned counsel appearing for the appellant vehemently submitted that the business run by the appellant as a franchisee of Ezee Online Marketing Private Limited, does not fall within the purview of Lotteries (Regulation) Act, 1998. He submitted, that the appellant sells the product and issues receipt for selling the products with number and then draw lucky lots and distribute gifts to the lucky receipt holder, and therefore, the receipt issued by the appellant, by no stretch of imagination, could be treated as lottery ticket. In other words, he submits that entire process of drawing lucky dips and distribution of gifts cannot be treated as lottery within the meaning of word

"Lottery" defined under Section 2(b) of Lotteries (Regulation) Act, 1998.

6. We have perused a receipt, which the appellant issues, and in our firm opinion, it is not an innocent receipt, as pretended to be, which is issued for sale of any product. The receipt contains a number, as is usually seen on the lottery tickets, and the following conditions with a note "conditions apply":

"1. for Terms and Conditions P.T.O;

2. this Acknowledgement slip should be retained to redeem the products and the gifts."

On the reverse of a receipt, several terms and conditions are printed, which in our opinion, undoubtedly amounts to running a lottery within the meaning of provisions of Lottery (Regulations) Act, 1998, illegally and unauthorisedly in the State. That apart, even if it is assumed, as it was tried to be contended, that the Company named Ezee Online Marketing Private Limited, registered at Mumbai, is having any such permission to run online lottery, the appellant has no right to run the business of the said company, as its franchisee, in this State.

7. In the circumstances, the appeal is dismissed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

Inn