

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7903 of 1997

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE MR. K.SREEDHARAN and
MR.JUSTICE R.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? YES
2. To be referred to the Reporter or not? YES
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil to see the judgements?

3 TO 5 NO

GUJARAT LOTTERY SELLERS ASSOCIATION

Versus

STATE OF GUJARAT

Appearance:

MR JJ YAJNIK for Petitioner

MR B.Y. MANKAD, AGP, for the State.

CORAM : THE CHIEF JUSTICE MR. K.SREEDHARAN and
MR.JUSTICE R.A.MEHTA

Date of decision: 24/10/97

ORAL JUDGEMENT (Per R.A.Mehta, J.)

The petitioner, Gujarat Lottery Sellers Association, has by this petition challenged the constitutional validity of the Lotteries (Regulation) Ordinance, 1997, promulgated by the President of India on 1st October, 1997 and bringing into force on 2nd October, 1997. The petitioner has also challenged the Government

of Gujarat notification dated 30th September, 1997 banning the instant lotteries within the State with effect from 1st November,1997.

2. Lotteries (Regulation) Ordinance, provides that no State Government shall organise, conduct or promote any lottery save as provided in section 4. Section 4 reads as follows:

"4. A State Government may organise, conduct or promote a lottery, subject to the the following conditions, namely;-

- (a) prizes shall not be offered on any preannounced 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 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 State Government itself shall conduct the draws of all the lotteries;
- (e) the prize money unclaimed within such time as may be prescribed by the State Government or not otherwise distributed, shall become the property of the Government;
- (f) the place of draw shall be located within the State concerned;
- (g) no lottery shall have more than one draw in a week;
- (h) the draws of all kinds of lotteries shall be conducted between such period of the day as be conducted between such period of the day as may be prescribed by the State Government;
- (i) the number of bumper draws of a lottery shall not be more than six in a calender year;
- (j) such other conditions as may be prescribed by the Central Government;"

Section 5 reads as follows:

"5. A State Government may, within the State, prohibit the sale of tickets of a lottery organised, conducted or promoted by another State."

3. The learned counsel for the petitioner has submitted that the petitioner and their members are the sellers of lottery tickets of lotteries floated by States like, Assam, Maghelaya, Manipur, Mizoram, Himachal Pradesh, Tamil Nadu etc. It is submitted that by this way, backward states have been generating income for development and that the petitioners are paying sales tax on the sale of lottery tickets.

4. The learned counsel for the petitioner has submitted that the condition precedent for issuing the proclamation is not satisfied and it is submitted that there was no material before the President to satisfy himself that circumstances exist which rendered it necessary for him to take immediate action. It is submitted that lotteries are being organized by various State Governments since years and there was no such emergency for taking immediate action by the Ordinance.

Article 123 of the Constitution reads as follows:

"123. Power of President to promulgate Ordinance during recess of Parliament:-(1) If at any time, except when both Houses of Parliament are in session, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require.

5. Secondly, it is submitted that section 5 of the Ordinance empowers the State Government to prohibit sale of tickets of other State lotteries and it is submitted that this is violative of Constitutional scheme of distribution of the legislative powers and the power to legislate on the State lotteries is only with the Union Legislature under List I Entry 40 and therefore, this is violative of that entry.

Thirdly, it is submitted that the State Notification dated 30th September, 1997 is passed even before the issuance of the Ordinance which has come into force on 2nd October, 1997 and therefore it is without any authority.

6. The crucial provision of the Lotteries (Regulation) Ordinance is section 4 which does not ban and clearly permits and regulates the lotteries organised, conducted and promoted by the State Governments. There is no ban or prohibition of State lotteries. However, what is sought to be ensured by section 4 is that they should be genuine lotteries organised by the State Governments. In the case of *State of Haryana vs. Suman Enterprises* (1994) 4 SCC, 217, the Supreme Court had an occasion to consider the question as to what lotteries can be said to be organised by a State Government in contra distinction to lotteries authorised by the State Government. In para 3 of the judgment, the Supreme Court observed as follows:

"Prima facie, it appears to us that the concept of a lottery 'organised' by a State would require certain basic and essential concomitants to be satisfied as, indeed, members of the public when investing their money in such a lottery proceed on a trust and on certain assumptions as to the genuineness, bona fides, safety, security, the rectitude of administration etc. associated with governmental functioning. If some of the basic functions characterising a State-organised lottery are delegated or abdicated by the State this public trust is impaired. 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 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 us to be the minimal characteristics of a lottery which can claim to be 'organised' by the State."

The Supreme Court also referred to royalty being paid to the State Governments when the lotteries are said to be run by the State Governments and the Supreme Court found that the idea of fixed sum of royalty paid by the agent would be more consistent with the idea of enfranchisement or farming out of a right to organise a lottery than with the idea of an agency. If the basic and essential features indicated by the Supreme Court were ensured, it would be possible to raise a presumption that the lottery is organised by the State itself and not merely authorised by it.

The basic and essential features pointed out by the Supreme Court are now incorporated in section 4 of the Ordinance. Therefore, what has been done by the Ordinance is to see that only genuine State lotteries are permitted to operate. The State lotteries, as observed by the Supreme Court, have an element of trust and certain assumptions as the genuineness, bonafides, safety and rectitude of administration etc. associated with governmental functioning. It is with that in view that section 4 permits the State Governments to organise, conduct and promote lotteries subject to conditions mentioned in section 4 (a) to (j) quoted earlier. No exception can be taken to the legislation giving effect to and adopting the Supreme Court findings with a view to see that only genuine State lotteries are allowed to function and operate.

7. The nature and gravity of social evil of lottery has been recognized and emphasised at several places, several times in various fora. This is permitted to the limited extent of a State Government itself organizing, conducting and promoting a lottery for the benefit of the public or for the benefit of the States. However, in the name of the State Governments, if other lotteries which cannot be said to have been for the benefit of the State concerned are permitted, different considerations would arise. It is mentioned by the Supreme Court in the aforesaid judgment that if the entire collection of all wholesale and retail sales go to the State exchequer and

all the sales & draws are conducted by the State Government and other conditions of genuine State lottery are satisfied, they are not prohibited by section 4. This is only a regulatory measure with a view to prevent abuse of the name of State lotteries by running lotteries in the name of State Governments not fulfilling the essential and basic criteria laid down by the Supreme Court and which are now incorporated in the Ordinance. This provision cannot be said to be violative of any fundamental right of the petitioners who are mere sellers of the lottery tickets.

8. The argument that the President could not have been satisfied about the necessity of immediate action does not have any basis. By mere casual averment, it cannot be said that there is no such Presidential satisfaction. In the case of *A.K.Roy v. Union of India*, AIR 1982 SC 710, in para 29 and 30, the Supreme Court has dealt with such a contention. The existence of circumstances which satisfied the President about the necessity for immediate action would be within the special knowledge of the Executive, yet the Supreme Court did not cast the burden on the Executive to establish those circumstances and it was held that the petitioners had at least to prima facie make out that there could not have existed any circumstances necessitating the issuance of the Ordinance. The Supreme Court held that every casual or passing challenge to the existence of the circumstances will not be enough to shift the burden of proof to the Executive to establish those circumstances. In this case, the petitioners have not led any acceptable foundation to hold that no circumstances existed or could have existed which rendered it necessary for the President to take immediate action by promulgating the impugned Ordinance. The need to deal with the social evil and extensive abuse of the lotteries in the name of State would be sufficient justification for satisfying the President about the necessity to take immediate action. On this ground, the Ordinance cannot be set aside.

9. The second contention that by enacting section 5 and enabling the State Government to prohibit the sale of State lotteries within the State is violative of Entry 40 of List I. It is to be realised that on the subject of State lotteries, the legislative power is with the Union legislature and the Union Legislature is competent to enact law and delegate the power. In the present case, merely because the power is delegated to State Governments with respect to the area within that State, it cannot be said that thereby the Union Legislature has

abrogated that entry or committed any violation. The enactment of section 5 is within the competence of the Union Legislature and by enacting that provision the States have been enabled to prohibit the sale of tickets of lotteries of other states within their State only. This cannot be said to be in any manner violative of Entry 40 of List I.

10. The third contention that the State Government has issued the impugned notification dated 30th September 1997 even prior to the issuance of the Ordinance, is wholly misconceived. The notification of the State Government has nothing to do with the Ordinance or exercise of power under section 5 of the Ordinance. The notification has been issued wholly independently of the Ordinance. In fact, it has been issued in pursuance of a writ petition filed in Gujarat High Court being Special Civil Application No.4169 of 1997 where on an application of one Sama Mohammed Husein Kasam, the High Court had taken cognizance and issued notice to the State authorities. In the application, it was stated that lottery is a social evil and was required to be banned. It was also noticed that the State Government had sought legal opinion for imposing ban on lotteries. The opinion was that the State Government is not competent to ban sale of lotteries organised by other States in view of Entry 40 of Union list and a reference was made to the Supreme Court Judgment in the case of State of Haryana vs. Suman Enterprises (supra). The High Court referred to para 3 of the judgment of the Supreme Court and also the judgment of the Karnataka High Court in the case of State of Goa v. State of Karnataka, reported in AIR 1997 Karnataka 161. In that case, the petitioner, State of Goa aggrieved by the withdrawal of permission granted to State of Goa for running the instant Lottery in Karnataka approached the Karnataka High Court. The withdrawal of permission was upheld by the Karnataka High Court, wherein it was held that it is open to the State Government to re-examine such cases whether the State lottery is really organised by the State Government or by mere authorised agencies, which virtually organise such sale ofR

lotteries which are practically organised and run by the private agencies could be banned by the State Government.

The Gujarat Government was, therefore, directed to re-examine this aspect with respect to lotteries which were operated in the State of Gujarat. This order was passed on 2nd September, 1997. It is in pursuance of this order that the notification dated 30th September,

1997 came to be passed by which the ban is put only on instant lotteries.

11. It may be noted that instant lotteries are run not only very frequently and with a frequency of less than a week or less than a day, but there are hourly and half hourly draws going on which show that these lotteries are instant lotteries. A sample of such results of lotteries are given below:

GOVT.OF NAGALAND

Result on 23.10.97

Draw Every Thursday

Weekly Lottery Name	Draw Time	1st Prize No.	Weekly Lottery Name	Draw Time	1st Prize No.
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Royal Savera	9.00	429566	Royal Sagar	3.30	143170
Brown. a.m.		Brown.		p.m.	

Royal Suraj	9.30	213132	Royal Crown	4.00	126253
Brown. a.m.		Brown.		p.m.	

Royal Morning	10.00	225412	Royal Silver	4.30	163722
Brown. a.m.		Brown.		p.m.	

Royal Gold	10.30	283613	Royal Evening	5.00	213324
Brown. a.m.		Brown.		p.m.	

Royal Diamond	11.00	111384	Royal Star	5.30	202734
Brown. a.m.		Brown.		p.m.	

Royal Sitara	11.30	105931	Royal Sandhya	6.00	309433
Brown. a.m.		Brown.		p.m.	

Royal Sangam	12.00	233830	Royal Shyam	6.30	169321
Brown. Noon		Brown.		p.m.	

Royal Vijay	12.30	179358	Royal Shubh-	7.00	106636
Brown. p.m.		ratri		Brown. p.m.	

Royal 100	01.00	214409	Royal Ratrani	7.30	125737
Brown. p.m.		Brown.		p.m.	

Royal Raja	01.30	189578	Royal Night	8.00	192230
Brown. p.m.		Brown.		p.m.	

Royal Afternoon	02.00	296011	Royal Rajni	8.30	157227
Brown. p.m.		Brown.		p.m.	

Royal Rani 02.30 161826 Royal Chandni 9.00 159516
Brown. p.m. Brown. p.m.

Royal Nirmal 03.00 235459 We are not responsible for
Brown. p.m. printing errors. Please check
the gazette copy.

In all the above lotteries, the first prize Rs. 2000/- and second
prize Rs. 1000/- on the last digit.
Issued by: Jt. Sec. (Fin) & Director State Lotteries, Government of
Nagaland, Kohima.

Result of weekly draw held on 23.10.1997.
Himachal Pradesh State Lottery.

Time of Draw	1st Prize	Last Prize
No.	No.	

Mala Rajashri Weekly	10.00 a.m.	B-709106	78
Mohak Rajashri Weekly	10.30 a.m.	C-552349	50
Manak Rajashri Weekly	11.00 a.m.	B-216320	51
Marina Rajashtri Weekly	11.30 a.m.	B-606504	95
Madhuri Rajashri Weekly	11.40 a.m.	A-085479	45
Mangal Rajashri Weekly	12.00 noonR	

Mira Rajashri Weekly	12.30 p.m.	C-266792	56
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Time of Draw	1st Prize	Last Prize
No.	No.	

Mukund Rajashri Weekly	12.35 p.m.	A-015866	68
Manik Rajashri Weekly	01.00 p.m.	B-438353	83
Metro Rajashri Weekly	01.30 p.m.	B-131110	21
Maya Rajashri Weekly	02.00 p.m.	B-620554	13
Mamta Rajashri Weekly	02.30 p.m.	B-901693	14
Malati Rajashri Weekly	03.00 p.m.	B-778037	68
Mohini Rajashri Weekly	03.05 p.m.	208366	96
Manisha Rajashri Weekly	03.30 p.m.	B-828473	68
Mayur Rajashri Weekly	04.00 p.m.	C-353196	43
Mayank Rajashri Weekly	04.30 p.m.	A-258300	73
Mina Rajashri Weekly	05.00 p.m.	B-651684	22

Thus, though the title given is weekly lotteries, these
lotteries are so organised as to result into hourly draws.

The Karnataka High Court, therefore, rightly declared such lotteries to be gambling and betting and therefore within the competence of State Legislature under Entry 34 of List I. The above samples also show that first and second prizes are based on last digit i.e. single digit.

12. In view of the notification of 30th September 1997 issued by the Gujarat Government, the petition seeking the ban came to be disposed of as infructuous.

13. Now the present petitioner Association of lottery sellers submits that they are running genuine State lotteries and they are complying with the provisions of section 4 of the Ordinance. They have also agreed and undertaken that they will not be running weekly, daily or hourly draw lotteries. The undertaking of the President of the Association is taken on record.

14. If that is the case of the petitioner and if this be true, there is no reason for the petitioner to have any apprehension. The State Government has merely banned the instant lotteries. The Central Ordinance has continued the genuine State lotteries,

15. We have been shown a copy of a interim order of Assam High Court in Civil Rule No.996/97 in the case of State of Manipur vs. Union of India & ors. wherein the Assam High Court has granted stay of operation of the Ordinance. We are, with respect, unable to agree with the same. We do not find any prima facie case nor balance of convenience in favour of the petitioners.

16. Since none of the contentions raised by the petitioner has any merit, the petition is dismissed.

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