(2010) 08 KL CK 0053

In the High Court Of Kerala

Case No : Writ Petition (C) No. 25632 of 2010 (D)

A. John Kennedy APPELLANT

Vs

State of Kerala and Others RESPONDENT

Date of Decision : 30-08-2010

Acts Referred:

Constitution of India, 1950 — Article 19(1), 226, 253, 301
Kerala Tax on Paper Lotteries Act, 2005 — Section 10, 10(1), 10(2), 10(3), 10(4)
Lotteries (Regulation) Act, 1998 — Section 11(1), 3, 4, 5, 6
Lotteries (Regulation) Rules, 2010 — Rule 6, 7

Citation : (2010) 4 ILR (Ker) 353

Hon'ble Judges : P.R. Ramachandra Menon, J

Bench : Single Bench

Advocate : Sijo George, for the Appellant; K. Ramakumar, for the Respondent

Judgement

P.R. Ramachandra Menon, J.—''The King does no wrong'' is the age-old adage. But the ''State'' can be an exception, at least in the case of running Lotteries, as it appears from the provisions contained in the Lotteries (Regulation) Act, 1998.

2. To curb the menace of Lottery Trade in the country, the malpractices thereof and the impact of certain types of Lotteries on poorer sections of the Society, the Parliament enacted the Lotteries (Regulation) Act, 1998 (Act 17 of 1998). By virtue of Section 3, it is stipulated that no State Government shall organise, conduct or promote any Lottery, save as otherwise provided in Section 4, specifying the conditions. Section 5 enables a State Government to prohibit the sale of tickets of a Lottery organised, conducted or promoted by every other State. As per Section 6, the Central Government is empowered to prohibit any Lottery organised, conducted or promoted in contravention of the provisions of Section 4 or where tickets of such Lottery are sold in contravention of the provisions of Section 5. The penalty provision, particularly Sub-section (1) of Section 7, is in respect of the penalty to be imposed on violation of the provisions of the Act, upon the Head of the Department, if the violation is by any Department of the State Government and Sub-section (2) enables to proceed

against such other officer of the Department as well, if he is also involved, to the extent as specified therein. When Sub-sections (1) and (2) deal with proceedings against the ''officers of the Government'' as aforesaid, Sub-section (3) provides for proceeding against ''any person'' who 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. Section 8 makes it clear that the offences under the Act shall be ''cognizable'' and ''non bailable'' and Section 9 deals with the offences by Companies. Thus, going by the scheme of the Statute, it is very obvious that it was enacted by the Government of India, mainly ''to protect the poor people of the country'' who get attracted to the tempting torch lit by the organisers/conductors/promoters of the Lottery and burn their lives, besides ruining their families and ''not as a measure for augmentation of the revenue'' of the State. The issue involved in the present case, as to the relative rights and liabilities to pay/accept the tax under the Kerala Tax on Paper Lotteries Act, 2005 has to be examined in this broad spectrum.

3. Coming to the case in hand, the ''Interim relief'' prayed for, under prayer ''A" is as follows:

Directing the Respondent No. 6 to accept the advance tax from the petitioner in relation to the Royal Government of Bhutan and the State Government of Sikkim lotteries under the Kerala Paper Lotteries Tax Act, 2005 from month to month during the pendency of the present writ petition;

This by itself appears almost to be the ''Main relief'' sought for as prayer ''A'' in the Writ Petition, which is extracted below:

Issue a Writ of Mandamus or any other appropriate writ order or direction directing the Respondent No. 6 to accept the advance tax from the petitioner in relation to the Royal Government of Bhutan lotteries under the Kerala Paper Lotteries Tax Act, 2005.

When the matter came up for admission before this Court on 18.08.2010, the primary question which struck the mind of this Court was, whether this Court would be justified in granting any interim relief (if eligible), which substantially is the main relief. The legal position stands already answered by the Honourable Supreme Court as per the decision reported in Bank of Maharashtra Vs. Race Shiping and Transport Co. Pvt. Ltd. and another, holding that no main relief'' can be granted in the form of ''interim relief''. This required the matter to be heard in detail and accordingly, the Writ Petition was heard on the said date, as both the sides were represented, including the 7th respondent/the Royal Government of Bhutan and the State of Sikkim/the 8th respondent, though the Writ Petition was yet to be admitted and notice was still to be ordered to the said respondents.

4. Mr. Altaf Ahammed, the learned Senior Counsel addressed the arguments on behalf of the petitioner, which was supported by Mr. Rajeev Nayyar, the learned Sr. Advocate, who addressed the arguments on behalf of the Royal Government

of Bhutan, (the 7th respondent) and Mr. Neeraj Kishan Kaul, the learned Senior Counsel led the arguments on behalf of the State of Sikkim, (the 8th respondent); while the arguments on behalf of the first respondent/State of Kerala and the authorities under the State were anchored by the learned Sr. Counsel Mr. Nageswara Rao.

5. The basic issue projected in the Writ Petition is whether the State is justified in refusing to accept the advance tax u/s 10 of the Kerala Tax on Paper Lotteries Act, 2005 and whether the same would result in interfering, prohibiting or stopping the entry or sale of the Lottery tickets of the Royal Government of Bhutan and the State of Sikkim.

6. The learned Senior Counsel appearing for the petitioner submitted that the cause of action is in respect of the period from 01.09.2010 and that the relief now pressed for, is in respect of the Lotteries launched by the 7th respondent/ Royal Government of Bhutan. In respect of Lotteries launched by the 8th respondent/State of Sikkim, it was stated that they were no more to be in operation from 01.09.2010, because of temporary stoppage of the scheme as ordered by the Sikkim Government; simultaneously adding that the petitioner is entitled to have similar reliefs in respect of Lotteries of the said respondent as well, when they are launched in due course. Referring to the scheme of the ''Central Act'', (Lotteries (Regulation) Act 1998) and the provisions of the ''State Act'' (Kerala Tax on Paper Lotteries Act, 2005) and also with reference to the various binding judicial precedents, learned Senior Counsel submitted that the petitioner is constrained to approach this Court, in spite of several rounds of litigations involving similar/incidental cause of action and favourable orders/ verdicts, only because of the conscious attempt and course being pursued by the State Government, who denied the entry and sale of Lotteries launched by the 7th and 8th respondents through the petitioner, who is stated as the ''Promoter'' and who has been pursuing the said business for quite long, having been appointed as the Promoter to conduct the said business in the State of Kerala and has been remitting tax payable to the State without fail. It was pointed out that by virtue of his being the Promoter as defined u/s 2(1) of the State Act and by virtue of the liability to pay tax as provided u/s 6 of the State Act, the petitioner has got registered as a ''Promoter'' u/s 7, as borne by Ext. P1(a) Certificate of Registration, which has been renewed and valid till the next year as evident from Ext.P2 Certificate issued by the 6th respondent. By virtue of the mandate u/s 10, the petitioner is supposed to effect tax in advance, on the first of every month (if holiday, on the next working day) along with a statement containing such particulars as prescribed, relating to the ''draws'' to be conducted during the month commencing from the next succeeding month and if there is any default or delay in paying the tax in advance, interest is liable to be paid at the rate of 2% per month from the date of default or short payment, to the date of payment of such tax. Referring to Ext.P7 series receipts/forwarding letters, it is stated that the petitioner has been remitting the tax and interest as specified and has been filing the returns u/s 8.

7. Notwithstanding the payment of tax being effected by the petitioner, the 6th respondent had refused to accept the tax from the petitioner for some reasons and issued a show- cause notice u/s 10(4) earlier, proposing to cancel the registration, which made him to approach this Court by filing W.P.(C) 30355 of 2006 (when the petitioner was engaged in the trade of Lotteries launched by 8th respondent/State of Sikkim). Similar Writ Petition was filed by another petitioner who was the Promoter and was dealing with the Lotteries launched by the 7th respondent/Royal Government of Bhutan, (who was also confronted with similar show-cause notice), by filing W.P.(C) 30176 of 2006. The reason stated in the show-cause notice for cancellation of the registration was that the Lottery was ''being run in violation of the conditions stipulated u/s 4 of the Central Act''. After analysing the facts and figures, it was held in paragraph No. 23 of the common verdict (Ext.P15) passed by the learned single Judge of this Court, that the action on the part of the Government in seeking to cancel the registration for violation of the conditions of Section 4 of the ''Central Act'' was without jurisdiction, as it would virtually amount to prohibition of the sale of the Lottery contemplated u/s 5 of the Central Act, for which the State Government was having no power; the same being vested with the Central Government. The action, which the State cannot do u/s 5 of the Central Act directly, cannot be done indirectly, referring to the State Act; more so, when the State of Kerala has no power to regulate or prohibit Lottery, unless it is a Lottery Free Zone.; was the crux of the finding. Accordingly, the tax offered by the petitioner in respect of the ''Sikkim Lottery'' was directed to be received, though some other adverse observations were made in the next paragraph, holding that the State Government of Sikkim was running the Lottery with admitted violation of Section 4 of the Central Act and in turn, directing the Central Government, (who was ''suo motu'' impleaded as the additional 8th respondent as per the order dated 05.01.2007), to look into the complaints as to the violations, in accordance with law, within four months.

8. With regard to the cause of action projected in the connected case, i.e., W.P. (C) 30176 of 2006 pertaining to the sale of Lottery of the Royal Government of Bhutan, it was held that the position stood on a different footing; Bhutan being a foreign country. After detailed discussion, it was held that, if the State of Kerala was satisfied that the Lottery was being run in violation of the provisions of Section 4 of the Central Act, Lottery of the said Government (Royal Government of Bhutan) could be prohibited by the State and accordingly W.P.(C)No. 30176 of 2006 was dismissed, repelling the challenge raised against the show-cause notice issued u/s 10(4) of the State Act, vide Ext. P15 judgment.

9. The above verdict passed by the learned single Judge was subjected to challenge by the aggrieved party (Promoter of the Bhutan Lotteries) by filing W.A. No. 88 of 2007, which culminated in Ext. P16 verdict rendered by the Division Bench of this Court. After meticulous analysis of the relevant provisions of law, it was held by the Division Bench, that the finding of the learned single Judge, treating the Lotteries launched by the Royal Government of Bhutan on a

different pedestal and dismissing the Writ Petition, was quite wrong and misconceived. It was observed that, so long as the State of Kerala was not a Lottery-Free State, the sale of Lottery tickets of Royal Government of Bhutan and the State of Sikkim stood on the same footing, in view of the ''treaty'' executed between the Government of Bhutan and the Government of India; more so in view of the mandate under Article 253 of the Constitution of India, the scope of which has been highlighted by the Apex Court in Maganbhai Ishwarbhai Patel etc. Vs. Union of India (UOI) and Another, . It was held that, in case of any violation of the ''treaty'' or ''agreement'' or Section 4 of the Central Act, it was for the Government of India to take action and not for the officers functioning under the State Act. Accordingly, the Writ Appeal was allowed, quashing the impugned show cause-notice and the respondents were directed to receive the tax from the petitioner in W.P.(C) No. 30176 of 2006.

10. The petitioner herein, was later appointed as the ''Promoter'' in respect of the Lotteries launched by the Royal Government of Bhutan and when the 6th respondent refused to accept the advance tax under the Kerala Act from the petitioner, he was constrained to approach this Court by filing W.P.(C) 36645 of 2007. The main contention raised from the part of the respondent/State was that the petitioner did not satisfy the definition of the term ''Promoter '' as defined u/s 2(1) of the State Act as he was never appointed ''by the Government of Bhutan'', but by M/s. Martin Lottery Agencies (Pvt.) Ltd, who was the actual Promoter, who however was not authorised to appoint anybody as the Promoter. Referring to the various provisions and the judicial precedents, it was held by a learned single Judge of this Court, that it was not a matter to be attended by the officers of the State of Kerala, when the 7th respondent has already addressed them on several occasions confirming the appointment of the petitioner as Promoter and also as submitted before this Court in this regard. Accordingly, the Writ Petition was allowed as per Ext. P4 judgment passed on 25.02.2008 and the 6th respondent was directed to accept the advance tax under the Kerala Tax on Paper Lotteries Act, 2005 from the petitioner in relation to the Lotteries of the 7th respondent. Though the said verdict has been subjected to challenge in appeal, no interim stay has been granted and as such, the contention of the petitioner is that, by virtue of the verdicts, as above, the 6th respondent is bound to accept the tax from the petitioner and there cannot be any refusal at all.

11. However, quite contrary to this, the 6th respondent, on the basis of some alleged complaints/press reports refused to accept the advance tax from the petitioner for the month commencing from 01.09.2010, which made the petitioner to send Ext.P14 letter along with a Crossed Pay Order dated 02.08.2010 for the sum of Rs. 6,30,00,000/- by registered post, requesting to issue the certificate of payment of tax, which was returned as ''refused to accept''. This made the petitioner to approach this Court, by filing the present Writ Petition, seeking for immediate intervention and to grant the reliefs as prayed for.

12. The learned Senior Counsel for the petitioner submits that, there is absolutely no rhyme or reason for not accepting the advance tax from the petitioner, that too, on the basis of some frivolous complaints or allegations that the petitioner is not the ''Promoter'' appointed by the 7th and 8th respondents. The conditions contemplated under Sub-sections (2) and (3) of Section 10 are stated as not attracted, to mulct any ''default liability'' upon the petitioner, as there is no default, when the petitioner has tendered the amount of ''advance tax'' along with the statement, which however has not been accepted by the 6th respondent and the postal cover, sent by the registered post, containing the contents as above has been caused to be returned ''as refused''. Because of the course pursued by the 6th respondent, presumably at the instance of the higher authorities of the State, the petitioner has been virtually prevented from bringing or pursuing the sale of the Lottery tickets of the respondents 7 and 8, which in fact amounts to ''prohibition of the Lotteries'' in an indirect manner. Because of the non acceptance of the tax and non issuance of the certificate of payment (which is to be accompanied with every transport of the Lottery tickets), the petitioner is made to face adverse consequences for ''fraudulent transport of Lottery tickets'' u/s 30 of the Kerala Act and such other measures, if he pursued any further business. The learned Senior Counsel further submitted that, since the position has been clarified by the concerned Governments i.e. respondents 7 and 8, as to the status of the petitioner as a ''Promoter'' duly recognized by the 7th and 8th respondents, it is no more open to be doubted by the respondents 1 to 6 and there is no rationale to prevent the running of Lotteries by other States, trying to promote solely the Lottery run by the State of Kerala, in an indirect manner.

13. Mr. Nageswara Rao, the learned Senior Counsel appearing for the first respondent State of Kerala submitted that the non-acceptance of tax by the 6th respondent was never because of any unlawful design as alleged, but because of genuine reasons as to the necessity for conducting an ''enquiry'' as to the status of the petitioner; particularly in view of the complaints received including those on 12.8.2010 and 13.8.2010, copies of which have been produced and marked as Annexures-''B'' and ''C'' respectively. Going by the contents of the complaints and also the agreement stated as executed between the 7th respondent/Royal Government of Bhutan and the other signatory i.e. ''M/s Monica Distributors Private Limited'', the latter having been appointed as the ''new Promoter'', the earlier Promoter M/s Martin Lottery Agencies (Pvt.) Limited'' did no more continue to be the Promoter of the 7th respondent and as a natural consequence, the petitioner who was appointed by M/s Martin Lottery Agencies (Pvt.) Limited did not have any ''locus standi'' to be claimed as the ''Promoter'' of the 7th respondent and to pay the advance tax. Reference was also made to the relevant provisions of law, particularly Section 2(i), 2(j) and 2(1) of the State Act, defining the terms ''Lottery'', ''Paper lottery'' and ''Promoter'' respectively. The charging provisions u/s 6, particularly Sub-sections (2) and (3) and also Sub-section (1) of Section 10, have been referred to, asserting that, tax has to be

paid by none other than the ''Promoter'', and if more than one ''Promoter'' has been appointed, it shall be effected only by the ''Authorised Promoter''. In view of the Annexures B and C complaints and the alleged agreement dated 17.3.2010 executed between the Royal Government of Bhutan and M/s Monica Distributors Private Limited, the newly appointed Promoter, as alleged, the matter required to be enquired before acceptance of the tax and stated that, such enquiry would be completed within two weeks. The learned Senior Counsel also submitted that, the power of the State Government to conduct such enquiry is not forbidden, merely because of some letters issued by the respondents 7 and 8 as to the recognition given to the petitioner as a ''Promoter''. It was also stated that Ext. P16 judgment passed by the Division Bench of this Court has not become final and that same is pending consideration before the Apex Court, having been tagged with the other cases, connected/incidental to the issue.

14. Mr. Rajeev Nayyar, the learned Senior Counsel who addressed the Court on behalf of the 7th respondent/the Royal Government of Bhutan, besides supporting the case of the petitioner, submitted with reference to Exts. R7 (a) to R7 (d) produced along with I.A. 11730 of 2010, that the first respondent/the State of Kerala, as per Ext. R7 (c) letter dated 04.08.2010 had requested the Government of India to ascertain and confirm the status of M/s Megha Distributor (proprietary concern of the petitioner) as the ''Promoter'' of the Bhutan Government Lotteries (as intimated by the latter). Similarly, the position with respect to the lotteries launched by the 8th respondent/State of Sikkim was also sought to be clarified, vide Ext. R7(c). On receipt of the said letter, the matter was immediately taken up by the Central Government with the 7th respondent, as per letter dated 09.08.2010 and the position was confirmed by the Bhutan Government, who conveyed the same by Ext. R7 (b) letter, which in turn was communicated by the Central Government to the first respondent/State of Kerala as per the letter dated 10.08.2010 (Ext.R7(d)), simultaneously confirming the position with regard to the 8th respondent/State of Sikkim as well.

15. Regarding the affairs of the 8th respondent/Government of Sikkim, Mr. Neeraj Kishan Kaul, the learned Senior Counsel submitted with reference to the documents produced as Exts. R8(a) to R8 (e) along with I.A. 11728 of 2010, that the first respondent State of Kerala, vide Ext.R8 (a) letter dated 28.7.2010 had sought for clarification from the Chief Secretary of the Government of Sikkim, as to the genuineness of the ''Promoter'' appointed by the latter, for the sale and distribution of Lottery tickets in the State of Kerala. This was replied to, by the State of Sikkim as per Ext. R8 (b) letter dated 30.07.2010 confirming that M/s. Megha Distributor (who was appointed by M/s Future Gaming Solutions India Private Limited, who in fact was appointed by the State of Sikkim for marketing the conventional paper lotteries of the State of Sikkim in the entire territory of India), was recognized by the State of Sikkim as the ''Promoter'' under the Kerala Act. Reference was also made to the ''public notice'' dated 12.08.2010 issued by the Director of Sikkim State Lotteries clarifying the above position and also the letter dated 12.08.2010 addressed to the person who was holding the

office of the 6th respondent, requesting to accept the advance tax from the petitioner; besides referring to Ext. R8 (e) letter dated 10.08.2010 routed through the Government of India, [which is the same as Ext. R7 (d)].

16. Coming to the scope and applicability of the Central Act/Rules and the State Act/Rules, the former pertains to the ''regulatory measures'' with regard to running of the lotteries; whereas the latter stands confined to the collection of tax and such other incidental aspects by the State. Both the Statutes are equipped with ''penalty clauses'' which are independent of each other and govern different fields. When Section 5 of the Central Act provides a blanket power for the State to prohibit the Lottery of every other States within the State, the power of the Central Government u/s 6 deals with right to prohibit such lotteries throughout India, if it is run in violation of the conditions stipulated in Section 4(a to k) or in contravention of Section 5 of the aforesaid Act. As mentioned already, the penalty prescribed u/s 7 of the Central Act; particularly in Sub-sections (1) and (2), is concerned with the ''officers of the State'', when the Department of the Government is guilty, while the stipulation under Sub-section (3) is to proceed against ''any person'' who acts as an ''agent'' or ''promoter'' or ''trader'' in any such lottery being run in contravention of the provisions of the Act or sells, distributes or purchases the tickets of such lottery. As already held by the Division Bench of this Court, as per Ext. P16 judgment, violation of any of the conditions stipulated u/s 4 of the Central Act is the lookout of the Central Government and the power, jurisdiction, competence to deal with such situation and to prohibit the lottery, vests exclusively with the Central Government. But the penalty and such other adverse consequences as stipulated under the State Act, with regard to the levy of tax on lotteries, is entirely different and by virtue of the law declared already, the State Government is not supposed to transgress or encroach into the other field, while exercising the power and jurisdiction under the State Act, directly or indirectly.

17. The constitutional validity of the Central Act was considered by the Apex Court in B.R. Enterprises Vs. State of U.P. and Others, and it was upheld confirming the action pursued by the ''U.P. Government'' in banning other State lotteries. It has been made clear by the Apex Court, that the very concept of Lottery involves an instance of ''gambling'' and as such, the rights and liberties to conduct the Lottery or the denial in this regard do not involve any infringement of Article 19(1)(g) or the mandate under Article 301 of the Constitution of India. Referring to the scope of Section 5 of the Central Act, it has been held that, the State Government is very much entitled to prohibit every other State Lottery, provided, the State Government is a lottery-free-zone. The Utter Pradesh Government in the said case was a lottery-free zone, unlike the first respondent, Government of Kerala, who is running Lotteries of its own. This being the position, the power to prohibit the Lottery stands exclusively vested with the Central Government under the other head i.e. u/s 6 and the conspicuous absence of the power of the State of Kerala u/s 5, cannot be sought to be compensated or complemented by causing the Lotteries organized, conducted or

promoted by other States through their promoters stalled in an indirect manner. So long as the respondents 7 and 8 have confirmed through the Central Government; that the petitioner is the ''Promoter'' recognized by the said Governments (the position having been intimated directly and also through the Central Government as borne by Ext. R7 (d)/Ext. R8 (e)) and also since the finding of the learned Single Judge of this Court in Ext.P15, to the extent it is detrimental to the 7th respondent/Royal Government of Bhutan has been set aside by the Division Bench as per Ext. P16, making it clear that the 6th respondent is liable to accept the tax from the Promoters of the Government of Bhutan and the Government of Sikkim Lotteries, this Court holds that there is no rationale on the part of the 6th respondent in refusing to accept the advance tax from the petitioner in this regard and the petitioner is entitled to remit the advance tax and obtain necessary certificate of payment, so as to bring and sell the lottery tickets of the Royal Government of Bhutan and the State of Sikkim (as and when launched giving rise to the cause of action). But then, the very next question is, ''to what extent''?.

18. Whether a blanket relief can be given, as prayed for, in respect of the Lotteries stated as being organized/conducted/promoted by the respondents 7 and 8 requires a closer scrutiny. In other words, while upholding the right of the petitioner as a ''Promoter'' of Lotteries of the 7th and 8th respondents and the liability of the 6th respondent to accept the tax under the State Act, what could be the extent of tax compelled to be accepted by the 6th respondent, to be enforced through issuance of a Writ of Mandamus is the point.

19. The payment of tax in advance, as contemplated u/s 10 of the State Act, is in respect of ''paper Lotteries'', which term is clearly defined u/s 2(j) of the said Act, identifying the same as any lottery other than on-line lottery, conducted in accordance with the provisions contained in Section 4 of the Lotteries (Regulations) Act, 1998 i.e. Central Act. There is no dispute for any of the parties, that running of the Lottery is regulated under the Central Act and that the conditions stipulated u/s 4 of the said Act (a to k) are to be satisfied. The contention of the petitioner, as well as the respondents 7 and 8, is that there is no violation at all (which however is disputed by the other side). Even if there is any violation, it is for the Central Government to take action, appears to be the contention.

20. Section 4(h) of the Central Act clearly stipulates that no lottery shall have more than one draw in a week. Taking note of the factual position as conceded earlier, the learned Single Judge had observed in paragraph No. 24 of Ext.P15 in W.P.(C) 30355 of 2006, that the State Government of Sikkim was conducting more than one lottery in a week under different Schemes, which was not permissible u/s 4(h) of the Central Act and the said admitted violation of the Act made the lottery illegal. Reliance was also placed on the declaration made by a Division Bench of this Court, interpreting Section 4 of the Central Act, in Writ Appeal No. 2011 of 2005, holding that the State can draw only ''52'' Ordinary

lotteries and ''6'' Bumper lotteries in an year. Accordingly, the Central Government was directed to look into the complaints that the conduct of the Lotteries by the State of Sikkim was in violation of Section 4 of the Lotteries (Regulation) Act, 1998, within 4 months as specified.

21. As mentioned earlier, the issue with regard to the Lottery of the Royal Government of Bhutan, which was the subject matter of consideration in the connected case, i.e. W.P.(C) No. 30176 of 2006 was dealt with in the succeeding paragraph (paragraph 25) of Ext. P15 judgment, holding that the Royal Government of Bhutan, being a foreign country, stood on a different pedestal and accordingly, interference was declined and the said Writ Petition was dismissed, which however was set aside by the Division Bench as per Ext. P16 judgment in W.A. No. 88 of 2007, directing the respondents to receive the tax from the Writ Petitioner in respect of the Bhutan Government Lotteries as well. The adverse finding made by the learned Single Judge in the other case (W.P. (C) No. 30355 of 2006) with regard to Lotteries of the Government of Sikkim, was subjected to challenge by the State of Kerala, by filing W.A. 101 of 2007; while Writ Appeal 256 of 2007 was preferred by the Director of the Lotteries of the State of Sikkim, to the extent the latter was aggrieved. Both the said Writ Appeals were considered by the Division Bench and a common verdict was passed on 30.3.2007, dismissing the Writ Appeal filed by the State of Kerala (W.A. No. 101 of 2007), while allowing the other Writ Appeal (W.A. No. 256 of 2007), holding that the observations made by the learned Single Judge in Ext. P15 judgment that there was violation of the statutory prescription u/s 4(h) of the Central Act and that, in view of the admitted violation, the complaints required to be considered by the Central Government and the further act of impleading the Central Government ''suo motu'', giving direction to look into the said complaints, were quite unwarranted and hence set aside. It is brought to the notice of this Court that the aggrieved parties have already approached the Apex Court and that the matters are still pending. However, it is to be noted, that the interference made by the Division Bench in Writ Appeal No. 256 of 2007 setting aside the observations and directions given by the learned Single Judge as to the violation of Section 4(h) of the Act, to look into the complaints in this regard, obviously is with regard to the ''punitive element'' involved in respect of the violation of the statutory prescriptions. In other words, punitive/prohibitory action to be pursued for the alleged violation of statutory prescription u/s 4(h) or such other instances under the Central Act and the scope of issuing a Writ of Mandamus to accept the tax under the State Act, with reference to the lotteries run in conformity with the statutory prescription u/s 4(h) of the Central Act are entirely different.

22. Writ of Mandamus is of course a positive concept based on vested rights and liberties. No Writ of Mandamus can be issued to perform an action, if the same will directly or indirectly contribute to the violation of a statutory prescription. When Section ''4(h)'' of the Central Act stipulates that no Lottery run by the State Government shall have more than one draw in a week and when Section

4(j) of the same Act mandates that the number of Bumper draws of a lottery shall not be more than ''six'' in a calender year, a Writ of Mandamus can be issued by this Court to accept the tax under the State Act only to such extent and no Writ can be issued to accept the tax in respect of more draws, simply leaving the issue in respect of the alleged violation, to be acted upon by the Central Government, as provided u/s 6 of the Central Act or otherwise. It is on this logic, it has been observed hereinbefore, that the ''punitive action'' for the violation of the conditions u/s 4 or in respect of the contravention of Section 5 stands entirely different from the scope of interference possible in the present case, with regard to the extent of tax compelled to be accepted under the State Act.

23. Going by the materials produced by the petitioner himself, particularly along with Ext. P14, different Lotteries are stated as being run by the concerned Governments and tax is sought to be paid in respect of all such Lotteries, giving a Trinomial, Quandrinomial or even a Polynomial nomenclature. It is stated that, there is only one draw per week in respect of such different Lotteries and hence that, there is no violation of Section 4(h) of the Central Act. If the version of the petitioner or that of the respondents 7 and 8 in this regard is to be accepted, there can be ever so many Lotteries to be run by the State, giving different names and conducting the draws almost every day of the week (giving different names to different Schemes on different dates). If this is permissible, such draws can also be ''every hour'' of the same day or at least in the Morning, Noon, Evening and in the Night, giving different names and projecting the same as under different Schemes. This is totally alien to the concept and prescription u/s 4(h) of the Central Act; more so, when considered in the light of the purpose of the enactment, which is the supreme rule of interpretation as made clear by the Honourble Supreme Court in B.R. Enterprises Vs. State of U.P. and Others,

24. In this context, it is relevant to go through the ''Objects and Reasons'' of the Act 17 of 1998 i.e., Lotteries (Regulations) Act, 1998. The very concept of running a Lottery, for ''augmentation of revenue'' of the State, was probably mooted for the first time by the State of Kerala, nearly 4 decades back in 1967 and it was also being successfully made use of, as a measure to provide ''self-employment'' to lakhs of unemployed persons including aged, sick and physically disabled. The concept was later adopted by several other States and also by other sectors, which in the years to follow, paved the way for exploitation of the poor and illiterate class, who were otherwise rich in dreams and who wanted themselves to be enriched in terms of wealth, in no time. This adversely affected the very existence of lakhs of families of the poor, particularly the daily wagers which sent an alarming signal, on their economic ruins and the duty of the Nation to provide a ''Welfare State''. Feeling the pulse of the situation, the Central Government caused to promulgate Lotteries (Regulation) Ordinance, 1997 (Ordinance No. 20 of 1997 followed by the Second Ordinance (Ordinance 31 of 1997) on the 30th December 1997, to be replaced by ''Act 17'' of 1998, which came into effect from 02.10.1997.

25. There is a prohibition u/s 3 of the Central Act, stipulating that no State Government shall organise, conduct or promote lottery, otherwise than as provided u/s 4 [which stipulates different conditions from (a) to (k)], simultaneously providing for prohibition of the Lotteries under Sections 5/6 and for penalties u/s 7. The specific stipulation u/s ''4(h)'' to the effect that no lottery shall have more than one draw in a week, is perfectly in conformity with the ''objects and reasons'' to help the poorer sections of the Society, which is of paramount importance (not augmentation of Revenue) in regulating such lotteries, even though they are run by the State Governments. This is to save the poor from the errant State Governments/Departments, specifying the punishment to be imposed upon the ''Head of the Department'' or such ''other officers'' and also ''any other person'' who is involved as specified under Sub-sections (1) to (3) of Section 7, making the offence cognizable and non-bailable u/s 8 and separately dealing with the offences by Companies u/s 9. The scheme of the Central Statute clearly suggests that it is a measure of ''welfare enactment'' to protect the poor and illiterate people, who belong to the lower strata of Society and get more attracted to the lure and glitter of becoming rich on a new dawn, gambling with the lives and the existence of their families. It was with this intent, to save such poor folk and to save their families from being ruined, that the enactment was brought about; consciously incorporating Clauses (h) and (j) u/s 4, restricting the total number of draws. If every day, lottery or lotteries are held, the poor wage earners are likely to spend the whole or a portion of their wages to purchase the tickets everyday. If there is a gap of one week between the conduct of the lottery, there will be a reasonable ''cooling period'' between one purchase of ticket and another. This forms the foundation for the stipulation under Clauses (h) and (j) of Section 4, Act 17 of 1998 (Central Act), is never a statute for the augmentation of the Revenue of any State and as such, the reliefs prayed for, have necessarily to be moulded in the present case, exercising the unparalleled power under Article 226 of the Constitution of India with intent to give effect to the Central Statute and not to frustrate the same.

26. True, this Court has come across the Notification dated 01.04.2010 appearing in the Gazette of India as to the Lotteries (Regulation) Rules, 2010, which is stated as issued in exercise of the powers conferred by Sub-section (1) of Section 11 of the Lotteries (Regulation) Act, 1998 (Act 17 of 1998). As per Rule 6, it is stipulated that the number of lottery draws, except Bumper draw by an organising State from all the Lottery Schemes put together, shall not be more than ''24 per day ''. This suggests that a State can run a lottery providing for draws every hour of the day, pursuing similar course every day of the month except National Holidays (as provided in Rule 7). Such course is made possible, by giving different/convenient names to different lotteries, to distinguish one, from the other. Since the rule making power of the Central Government u/s 11 of the Central Act, is to give effect to the provisions of the Act and further since the purpose of the enactment is to mitigate the hardships of the Lottery-prone poorer sections of the Society and thus to save their families, the Rules now

framed by the Government, after nearly 12 years of the enactment, particularly under ''Rule 6'' providing for any number of draws, as stated therein, virtually defeats the purpose of the enactment. A ''Rule'' has necessarily to sub serve the ''Act'' and can never override the provisions of the Act. This being the position, it cannot be said that ''Rule 6'' of the Central Rules does come to the rescue of the petitioner, to have more draws for the Lotteries organised, conducted or promoted by the Respondents 7 and 8, than the extent as stipulated u/s 4(h) and 4(j). However, since the constitutional validity of ''Rule 6'' of the Central Rules does not form the subject matter of the present Writ Petition, this Court does not proceed to consider whether it is to be set aside; but for observing that the said rule, as now exists, cannot support the cause of the petitioner, to overreach the specific provisions in the Act. Hence, it is hereby declared that the petitioner is eligible to remit the tax under the State Act, only in respect of such number of draws as restricted to be conducted under Sections 4(h) and 4(j) of the Central Act and hence the Writ of Mandamus that could be issued to the 6th respondent, to accept the tax, can only be in respect of the such extent and never beyond.

27. Incidentally, it is also relevant to note that a positive declaration has been made by the Division Bench of this Court referring to the mandate u/s 4(h) of the Central Act in W.A. No. 2011 of 2005 (as taken note of in paragraph No. 24 of Ext. P15 judgment), that a State can run only ''52'' ordinary draws and ''6'' bumper draws in an year. Even though this Court has been given to understand that an SLP has already been preferred against the said verdict and that the same is pending consideration before the Apex Court, no interim order of stay is stated as passed or brought to the notice of this Court, particularly with regard to the above stipulation.

28. The declaration made by this Court now, as to the running of the Lotteries and the extent of tax liable to be collected with reference to the mandate u/s 4 (h) and (j) of the Central Act, is equally applicable to the first respondent/State of Kerala as well, who, according to the petitioner, is also running different lotteries in a week, (which contention has been taken note of in paragraph No. 24 of Ext.P15 judgment). The stand of the first respondent/State Government, referring to the various complaints stated as preferred by different authorities at different points of time, bringing the violation of Section 4 of the Central Act to the notice of the Central Government for immediate intervention (as borne by Annexures-''C'' to ''L'' produced along with the statement dated 17.08.2010) reveals that the main complaint against the respondents 7 and 8, originally was with regard to the violation of various provisions u/s 4, particularly Section 4(h). But, with passage of time, the assertion made as to the violation appears to be projected more with reference to Sections 4 (a) to (d), as given in the first paragraph of ''Annexure-L'' letter dated 11.08.2010. ''Caesar''s wife shall be above Board, always''. By virtue of the declaration of law as aforesaid and also by virtue of the scheme of the Central Statute as projected by the first respondent/the State of Kerala and others concerned in the paragraph No. 6 of

the statement, and also by virtue of the grievance highlighted by the State before the Apex Court, referring to violation of Section 4(h) as taken note of in ''Annexure-O'' interim order dated 11.03.2010, the State Government has also a duty to see that the purpose of the Central Act is promoted and achieved, ensuring that, the lotteries/draws run by the State are also in conformity with the Section 4(h) and 4(j) of the Central Act; thus displaying the image as a ''Model State'', saving the millions of poor people and their families from being plunged into doldrums.

29. The net result is as follows:

The refusal on the part of the 6th respondent to accept the advance tax from the petitioner u/s 10(1) of the State Act is wrong and illegal.

The petitioner in the capacity as the ''Promoter'' of the Royal Government of Bhutan and the Government of Sikkim (7th and 8th respondents respectively) is declared as eligible to remit the advance tax and get the Tax Paid Certificate for transportation and sale of the Lottery of the said respondents, limiting the same to the extent as it is permissible u/s 4(h) and 4(j) i.e., ensuring that no lottery shall have more than one draw in a week and not more than ''6'' Bumper draws are there in an year, irrespective of the different names/schemes given to different Lotteries.

The petitioner shall furnish a statement showing the details of the draws (under all names/schemes put together), to be conducted during the next succeeding month, confining the number of ''ordinary lottery draws'' to be in conformity with Section 4(h) of the Central Act, irrespective of the different names or different schemes and also confining the number of ''bumper draws'' to be not more than ''6'' in a calendar year as provided u/s 4(j) and continue to file such statement and satisfy the requirement of Section 10(1) of the State Act on the first day of the relevant month or otherwise as prescribed.

It will be for the petitioner, as the Promoter of the 7th and 8th respondents, to opt as to which of the different lotteries/schemes being organised, conducted or promoted by the said respondents are to be marketed in the State of Kerala, irrespective of the different names/classifications, without exceeding the limit as prescribed u/s 4(h) or 4(j) of the Central Act, showing the same in the Statement to be filed u/s 10(1) of the State Act.

The 6th respondent shall accept the advance tax in respect of such lotteries to the above extent and issue a Tax Payment Certificate in this regard.

No interruption shall be made with regard to the entry or sale of the lottery tickets being pursued by the petitioner as a Promoter of 7th and 8th respondents, subject to the stipulations as aforesaid.

Acceptance of the tax as above, will be without prejudice to the right of the first respondent to move the Central Government in respect of the violation of the statutory prescriptions (if any) and to pursue such other appropriate measures against the offenders in respect of the offences (if any) in accordance with the relevant provisions of law and of course subject to the restrictions, if any, imposed by the Hon''ble Supreme Court in the connected matters stated as pending.

Satisfaction of the requirement u/s 4(h) and 4(j) of the Central Act putting all the Lotteries together, irrespective of different names/Schemes, shall be followed and ensured in respect of the Lotteries run by the 1st respondent/State of Kerala as well.

The Writ Petition is disposed of as above.