(1999) 05 MP CK 0030

In the Madhya Pradesh High Court

Case No : L.P.A. No. 14 of 1999

Dinesh Gurjar APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 05-05-1999

Acts Referred:

Constitution of India, 1950 — Article 123(1), 253, 73
Madhya Pradesh Lotteries Pratibandh Act, 1993 — Section 3

Citation : (1999) ILR (MP) 561 : (1999) 2 JLJ 37 : (1999) 2 MPLJ 649

Hon'ble Judges : A.K. Mathur, C.J;Dipak Misra, J

Bench : Division Bench

Advocate : Rohit Arya, for the Appellant; Abhay Gohil, C.G.S.C. for Respondent No. 1 and V.K. Tankha, General and R.S. Jha, Dy, General for Respondent Nos. 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Mathur, C.J.

This is a Letters Patent Appeal directed against judgment dated 22-1-1999 passed by the learned single Judge in W. P. No. 2495 of 1998, whereby the petition filed by the appellant has been dismissed.

In order to dispose of this appeal, it is relevant to mention a few facts of the case. The appellant/petitioner filed writ petition under Article 226 of the Constitution of India and prayed for a writ of mandamus restraining the respondents 2 and 3 in creating hindrance in sale of lottery tickets of the Royal Government of Bhutan in the State of Madhya Pradesh. The petitioner/appellant is the Manager of M/s Surya Enterprises, which is the distributors of lotteries of Royal Government of Bhutan. It is alleged that an agreement was entered into between the Government of India and the Government of Bhutan on 29-2-1995 on Trade and Commerce between the Royal Government of Bhutan and the Government of Republic of India. Article-I of the agreement contemplates free trade and commerce between the territories of the Kingdom of Bhutan and the

Republic of India. Protocol to the agreement on Trade and Commerce further stated that for the purposes of the agreement, the term ''free Trade and Commerce'' in Article-I shall be understood to include within its scope sale of Bhutan lottery tickets in India and the sale of Indian Government or State Lottery tickets in Bhutan subject to the relevant laws which may be in force in the territory of Kingdom of Bhutan and India, as the case may be.

In pursuance of the agreement between the two nations, a protocol agreement in trade and commerce between the Government of the Kingdom of Bhutan and the Government of the Republic of India was entered into with reference to Article-I of the Agreement, which, reads as under :

"For the purpose of this Agreement, the term ''free trade and commerce'' in Article I shall be understood to include within its scope sale of Bhutan lottery tickets in India and the sale of Indian Government of State lottery tickets in Bhutan, subject to the relevant laws which may be in force in the territory of the Kingdom of Bhutan and India, as the case may be."

The agreement came into force with effect from 2nd March, 1995 and it was for a period of ten years. The State of Madhya Pradesh prevented the petitioner/ appellant to sell lottery tickets of the Royal Government of Bhutan because of the M. P. Lottery Pratibandh Act, 1993. The petitioner/appellant therefore approached this Court by filing present Writ Petition No. 2495/98. The contention of the petitioner/appellant was that since it is an international trade agreement between the two nations, therefore, the State Government cannot prevent the sale of Royal Government of Bhutan lottery tickets. The learned single Judge after referring to Entry 40 of List I of the Seventh Schedule of the Constitution of India, which relates to lotteries organised by the Government of India or the Government of a State, and Entry 34 List II of the Seventh Schedule of the Constitution relating to State which speaks of betting and gambling, came to the conclusion that by virtue of the powers of the State, the sale of lottery in the State of Madhya Pradesh can be prohibited by the State. Hence, the present appeal has been filed by the appellant/petitioner.

Before we advert to the various contentions raised by the learned counsel for the appellant/petitioner, it would be relevant to mention here relevant provisions. Entries 14 and 41 of List I of the Seventh Schedule of the Constitution of India read as under :

"14. Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries."

"41. Trade and commerce with foreign countries; import and export across customs frontiers; definition of customs frontiers."

Entry 34 of List II of Seventh Schedule of the Constitution reads as under :

"34. Betting and gambling."

State of Madhya Pradesh in pursuance of Entry 34 of List II of the Seventh Schedule of the Constitution of India firstly promulgated an Ordinance - M. P. Lottery Pratibandh Ordinance, 1992 on 18-11-1992 under Article 123(1) of the Constitution followed by another Ordinance and thereafter it was enacted as M. P. Lottery Pratibandh Act, 1993 (M.P. Act No. 8 of 1993) (for short hereinafter referred to as the Act of 1993) and it received the approval of the President. The Main purpose for enacting this Act was that the business of lotteries was having a detrimental social and economic impact particularly on the poorer section of the society, leading to serious adverse effect on public order and they were becoming habitual of participating in lotteries losing their hard earned money. This in turn created domestic tension; therefore, keeping in view this laudable purpose, the State enacted the Act of 1993. Section 3 of the Act of 1993 which is relevant for our purposes read as under :

"3. Ban on lottery. - Notwithstanding any agreement of contract entered into by the State Government with any person, no person shall be permitted to deal with in the trade or business of lottery or be an agent or promoter in respect of any lottery, nor shall he sell, distribute or purchase any lottery ticket within the territory of Madhya Pradesh."

By virtue of this enactment i.e. Act of 1993, the State has been empowered to prohibit the sale of lotteries in the State of M. P. and consequently, the State banned the sale of lotteries of the Royal Government of Bhutan in the State of M.P.

Learned counsel for the petitioner/appellant submitted that since the petitioner who is an agent for the distribution of lotteries of Royal Government of Bhutan by virtue of agreement on trade and commerce and by virtue of Entry 14 of List I of Seventh Schedule of the Constitution, the said agreement has to be implemented by the Government of India. Therefore, the State by virtue of local enactment cannot prohibit the sale of Bhutan lottery. It is also submitted that from time to time, executive instructions were also issued by the Government of India in exercise of powers under Article 73 of the Constitution of India and since it is the responsibility of the Government of India to implement the agreement, no law can be made to prohibit the enforcement of the international agreement which is within the domain of the Union of India. Learned counsel further submitted that the State Legislature is not competent to ban the international lottery and the State is empowered to only regulate private lotteries. Learned counsel invited our attention to Article 253 of the Constitution which says that notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body. Learned counsel also invited our attention to Article 51(c), according to which it is the duty of the State to endeavour to foster respect for international law and treaty obligations in the dealings of organised peoples with one another. It was submitted by the learned counsel for the petitioner/appellant that the State is bound under the law, as far as possible, to give effect to such international treaties.

Shri Tankha, learned Advocate General for the respondent State submitted that the international agreements and treaties are to be respected and as far as possible, they should be implemented so long as they are not against or inconsistent with the Municipal laws. Learned counsel did not dispute that under Article 253 of the Constitution, the Parliament can enact any law for implementation of international treaties.

In the above background, we would examine whether the State of Madhya Pradesh is competent to prohibit sale of lottery tickets in the State of M. P. or not. There is no dispute that the Government of India entered into a trade and commerce agreement with the Royal Government of Bhutan and pursuant thereto, lotteries tickets are being sold in the State of Madhya Pradesh. In this connection, it may be relevant to mention that the agreement which was entered into by the Government of India and the Kingdom of Bhutan on trade and commerce and by virtue of Article I of this agreement, there will be free trade and commerce between the territories of the two nations and it shall also include within its scope the sale of lottery tickets of Royal Government of Bhutan in India and the sale of Indian Government or State Lottery Tickets in Bhutan subject to the relevant laws which may be in force in the territory of the Kingdom of Bhutan and India, as the case may be. This shows that when the Protocol to the Agreement on trade and commerce was entered into with reference to the Article I of the Agreement, both the nations were conscious about the relevant Municipal Laws. Therefore, this protocol agreement was qualified that the sale of Bhutan lottery tickets in India and the sale of the Indian Government or State Lottery tickets in Bhutan shall be subject to the relevant laws which may be in force in the territory of the Kingdom of Bhutan and India, as the case may be. There is no dispute that by virtue of Entry 14 of List I of Seventh Schedule of the Constitution of India, the Government of India is under obligation to implement the international agreements, treaties and conventions with foreign countries but if any international agreement is contrary to the Municipal Laws then unless the Parliament enacts a law by virtue of Article 253 of the Constitution, till that time, the international agreement cannot be implemented. In the present case, it is apparent that no enactment was made by the Parliament in exercise of powers conferred under Article 253 of the Constitution to give effect this agreement so as to override the State laws. Since protocol agreement clearly stipulates that the sale of lottery tickets in India or Bhutan, as the case may be, shall be subject to relevant laws which are in force in the territory of both the nations. In the present case, the Act of 1993 of the State of M. P. was in force and Section 3 thereof prohibits sale of lottery tickets; therefore by virtue of this protocol agreement it is clear that the sale of tickets of Bhutan is subject to the relevant laws in the territory of India, Section 3 of the Act of 1993 will automatically come into play and the Bhutan lotteries cannot be sold in the State of M.P.

Learned counsel for the petitioner/appellant invited our attention to various communications issued by the Union of India from time to time and Annexure P7 dated 20th January, 1998 to all the Chief Secretaries of the States/Union Territories emphasising that by virtue of the Ordinance of 1997, namely Lotteries (Regulation) Ordinance 1997 which was re-promulgated, it is provided that the State Government may, within the State, prohibit the sale of tickets of a lottery organised, conduced or promoted by another State but this will not prohibit the sale of Bhutan lotteries in the State as the Entry 14 of List I of Seventh Schedule confers powers on the Central Government to regulate such international agreement and it was directed that necessary instructions may be issued to the Department. Similar communications have been placed on record which are Annex. P9 dated 21st May, 1998, Annex. P10 dated 27th April, 1998 and Annex. P11 dated 4th May, 1994. Learned counsel submitted that the Government of India can issue these executive instructions in exercise of powers under Article 73 of the Constitution of India.

There is no dispute that under Article 73 of the Constitution, the Government of India can issue necessary instructions with regard subjects enumerated in List I, but such executive instructions can be issued with regard to the subjects enumerated in List I unless they are violative of fundamental rights. In this connection, our attention was invited to the case of Maganbhai Ishwarbhai Patel etc. Vs. Union of India (UOI) and Another, which was a case with regard to the question of treating the international agreement entered into between the two States. The petitioners sought a writ of mandamus or any other appropriate writ to restrain the Government of India from ceding without the approval of the Parliament the areas in the Rann of Kutch, known as Kanjarkot, Chhadbet, Dharabanni, Priol Valo Kunand and two inlets on either side of Tharparkar to Pakistan as awarded to it in the award dated 19th February, 1968 of the Indo-Pakistan Western Boundary Case Tribunal. In the present case, there was a boundary dispute between India and Pakistan and an agreement was entered into between the two countries to refer this boundary dispute to the Tribunal and by virtue of the agreement, the Government of India nominated Ambassador Ales Bebler, Judge of the Constitutional Court of Yugoslavia and the Government of Pakistan nominated Ambassador Nasroliah Entezam of Iran and former President of the General Assembly of the United Nations. The two Governments having failed to agree on the selection of the Chairman of the Tribunal, the Secretary General of the United Nations, under the power reserved by sub-paragraph (iii) of Article 3 of the Agreement, nominated Judge Gunnar Lagergren, later on President of the Court of Appeal for Western Sweden. The Judge Ales Bebler accepted the entire claim of India and Nasroliah Entezam of Iran upheld the claim of Pakistan. Then the Chairman of the Tribunal gave his opinion. Ultimately, the award of the Chairman was sought to be implemented. In this background, certain land was to be parted away to the Pakistan and the question which was agitated before the Court was whether this ceding can be permitted in view of the frame work of the Constitution. Their Lordships of

Supreme Court observed that when a treaty or an award comes into existence, it has to be implemented and this can only be if all the three branches of Government i.e. the Legislature, the Executive and the Judiciary, or any of them, possess the power to implement it. If there is any deficiency in the constitutional system it has to be removed and the State must equip itself with the necessary power. In some jurisdictions, the treaty or the compromise read with the award acquires full effect automatically in the Municipal Law the other body of Municipal Law notwithstanding. Such treaties and awards are ''self- executing''. Legislation may nevertheless be passed in aid of implementation but is usually not necessary. Thereafter, their Lordships referred to various English decisions. Their Lordships referred to Entry 14 of List I of Seventh Schedule, Articles 253 and 73 of the Constitution and after referring to a decision of Federal Court in the case of AIR 1949 143 (Federal Court) and in Re Berubari Union and Exchange of Enclaves AIR 1960 SC 549 Vol. 47, it was observed with reference to Berubari Union''s case (supra) that a legislative action is necessary for implementation of the agreement relating to Berubari Union and simply amendment of Article 3 will not be sufficient and the Parliament has to amend the Constitution by virtue of Article 368 of the Constitution. Their Lordships further distinguished the case of Berubari Union (supra) and stated that in view of the decision in the Berubari''s case, no cessation of Indian territory can take place without the Constitutional amendment. Their Lordships held that since it was relating to the implementation of the award, Constitutional amendment is not required and the Supreme Court cannot sit in appeal over the order of the Tribunal. The majority of opinion concluded as under:

"59. On the whole, therefore, we are of the opinion that this reference began in a boundary dispute after open hostilities and was decided as such. In which case it cannot be said that there will be a cession of Indian territory and the rule earlier laid down by us applies. If no constitutional amendment is required the power of the Executive which extends to matters with respect to which Parliament has power to make laws, can be exercised to correct boundaries now that they have been settled. The decision to implement the Award by exchange of letters, treating the Award as an operative treaty after the boundary has been marked in this area, is within the competence of the Executive wing of Government and no constitutional amendment is necessary."

Justice Shah, though agreed with the majority opinion but by a separate judgment observed :

"The effect of Article 253 is that if a treaty, agreement or convention with a foreign State deals with a subject within the competence of the State Legislature, the Parliament alone has, notwithstanding Article 246(3), the power to make laws to implement the treaty, agreement or convention or any decision made at any international conference, association or other body. In terms, the Article deals with legislative power : thereby power is conferred upon the Parliament which it may not otherwise possess. But it does not seek to circumscribe the extent of the power conferred by Article 73. If, in consequence of the exercise of executive power, rights of the citizens or others are restricted or infringed, or laws are modified, the exercise of power must be supported by legislation; where there is no such restriction, infringement of the right or modification of the laws, the executive is competent to exercise the power."

It is thus true that if there is no violation of an individual right or any State laws, then the executive instructions can be issued by the Union of India under Article 73 of the Constitution. State laws cannot be overridden by executive instructions. In the present case, the submission of the learned counsel for the appellant/ petitioner is that since by virtue of Entry 14 of List I of Seventh Schedule of the Constitution it is the duty of the Union of India to get the international agreement implemented, therefore, it can give executive instructions, notwithstanding the State law which prohibited the sale of lottery tickets in the State. The contention of the learned counsel does not appear to be justified.

So far as the powers of the Central Government to issue instructions under Article 73 of the Constitution with reference to Article I of the Agreement is concerned, there is no violation of any laws. In the present case, no law has been enacted by the Parliament so as to implement the international agreement entered into between India and Bhutan regarding sale of lottery tickets under Article 253 of the Constitution and to mitigate the rigour of the Municipal Laws i.e. M. P. Lotteries Pratibandh Act, 1993. Therefore, the Government of India in exercise of executive power under Article 73 of the Constitution cannot direct the State of M. P. over-looking the provisions of law, sale of Bhutan Lottery tickets. More so, in this connection, attention is invited to the protocol to the agreement on trade and commerce which clearly stipulates that the sale of lottery tickets will be subject to relevant laws which may be in force in the territory of Union of India and the Royal Government of Bhutan, as the case may.

In this connection, reference may be made to a decision in the case of H. Anraj and Others Vs. State of Maharashtra, wherein their Lordships observed :

"4. Entry 40 of List I of the VIIth Schedule to the Constitution is ''Lotteries organised by the Government of India or the Government of a State''. Entry 34 of List II of VIIth Schedule is ''Betting and gambling'' included and has always been understood to have included the conduct of lotteries. Quite obviously, the subject ''Lotteries organised by the Government of India or the Government of a State'' has been taken out from the legislative field comprised by the expression ''Betting and Gambling'' and is reserved to be dealt with by Parliament. Since the subject ''Lotteries organised by the Government of India or the Government of a State'' has been made a subject within the exclusive legislative competence of Parliament, it must follow in view of Article 246(1) and (3) that no legislature of a State can make a law touching lotteries organised by the Government of India or the Government of a State. This much is beyond controversy and the Maharashtra legislature has acknowledged the position as indeed it must, in Section 32 of the Bombay Lotteries (Control and Tax) and Prize Competition

(Tax) Act, 1958. It is an Act to control and tax lotteries and to tax prize competitions in the State of Maharashtra. Section 32(b) expressly provides that nothing in the Act shall apply to ''a lottery organised by the Central Government or a State Government''. This, as we said, is but a recognition of the prevailing situation under the Constitution. The Constitutional position cannot be altered by an act of the State legislature."

There cannot be any dispute that there is a State law bearing on the subject in question and as per Protocol Agreement, it is stipulated that the sale of lottery tickets will be subject to relevant laws of both the nations i.e. Republic of India and Royal Government of Bhutan. When the State law is already in force, the executive instructions issued by the Government of India can be of no avail. No Act has been enacted by the Parliament in order to implement the aforesaid agreement under Article 253 of the Constitution and in such an event, the Municipal law will prevail and the State is competent to prohibit the sale of lottery tickets of the Royal Government of Bhutan in the territory of the State of M. P.

Learned counsel next submitted that since the international agreement is not covered by any of the entries, then it would be covered by a residuary entry 97 of List I of the Seventh Schedule of the Constitution of India. This argument is also without any substance. Entry 14 of List I of Seventh Schedule of the Constitution lays down that the power of legislation lies with the Government of India; therefore, resort to residuary entry will have no assistance. In this connection, earlier the Government of India had issued Ordinance and now the Parliament has enacted the Act called "The Lotteries (Regulation) Act, 1998", though we are presently not concerned with this Act because the question before us is with regard to implementation of international agreement entered into between the Republic of India and Government of Bhutan with regard to sale of Bhutan Lotteries in India. It may be relevant to mention here that this Act has now iron out conflicting laws of various States. Section 3 of the Lotteries (Regulation) Act, 1998 says that save as otherwise provided in Section 4, no State Government shall organise, conduct or promote any lottery. Section 4 thereof lays down conditions subject to which lotteries may be organised. Section 5 of the said Act of 1998 says that the State Government may within the State prohibit the sale of tickets of a lottery organised, or conducted promoted by every other State. It is therefore explicitly clear that so far as the sale of lotteries of other States from one State to another State is concerned, the States are within their right to prohibit sale of such lotteries. But this question is not before us, therefore we need not advert in that regard.

Shri Tankha, learned Advocate General invited our attention to a decision of Supreme Court in the case of State of Haryana Vs. Suman Enterprises and Others, which is a case in which it was argued that the State has no power under Entry 34 of List II of the Seventh Schedule of the Constitution to impose ban on sale of tickets of lotteries organised by the Union or a State. Their Lordships observed that they do not propose to examine the details of scheme of various States. However, an opportunity was given to make an application before the State of M. P. that the lotteries organised by the States are immune from the State''s regulatory power and they are entitled to sell lottery tickets in the State of M. P. It was directed that the State Government will examine the representation and pass appropriate orders, though their Lordships did not decide the validity or invalidity of the present Act.

Our attention was also invited to observation made by Hon. G. P. Singh in the Interpretation of Statutes, Seventh Edition 1999, page 444 :

"(b1) Regard to International agreements or conventions and International Law ;

If the terms of a statute are clear and unambiguous, they must be given effect to whether or not they carry out the State''s treaty obligations, for the sovereign power of legislation extends to breaking treaties and any remedy for a breach of an international obligation lies in a forum other than the State''s Municipal Courts. If the terms of the legislation are not clear, however, and are reasonably capable of more than one meaning, the treaty itself becomes relevant, for there is a prima facie presumption that Parliament does not intend to act in breach of International Law, including therein specific treaty obligation; and if one of the meanings which can reasonably be ascribed to the legislation is consonant with the treaty obligations and another or others are not the meaning which is consonant is to be preferred. This is all the more relevant in India for Article 51(c) of the Constitution lays down as one of the directive principles of State Policy that ''the State shall endeavour to foester respect for international Law and treaty obligations in the dealings of organised people with one another''. This directive though not enforceable by courts can be kept in view in interpreting other parts of the Constitution and statutes made under it which are reasonably capable of more than one meaning."

It is true that as far as possible, endevour of the courts should be to read the provisions of the State laws consistent with the provisions of the international agreement and conventions but in case they are incapable of being so read, then in that case, the only remedy is that the Parliament should step in and enact a law under Article 253 of the Constitution of India to take away any inconsistency. It is already mentioned above that no such enactment has been framed by the Parliament so as to make passage for the trade agreement between India and Bhutan enforceable in the Municipal Courts.

Our attention was also invited to a decision of the Kerala High Court in the case of Commercial Corporation of India Private Ltd., Manipal Vs. State of Kerala and Another, where their Lordships have in paragraph 13 observed as under :

"13. With regard to the lottery organised by the Bhutan Government, since it is a foreign Government, it cannot be sold in the State of Kerala without permission from the State."

Our attention was also invited to the decisions of Karnataka High Court in the case of G. Moorthy Vs. State of Karnataka, wherein their Lordships observed as under :

"32. For the reasons stated above, we hold that the Act falls under Entry No. 34 of List II of Seventh Schedule of the Constitution. It does not entrench upon the legislative power of the Parliament, as such the action of the authorities of the Government of Karnataka in seizing the lottery tickets of lottery conducted by the Royal Government of Bhutan are valid and are well within the ambit of the Act, as such the same do not travel beyond the authority of the State and do not infringe or affect the trade and commerce relationship between the Government of India and the Royal Government of Bhutan. There is also no interference with the foreign affairs of the Government of India with the Royal Government of Bhutan. There is no decision of the Government of India, as already pointed out above, to organise the lotteries in India in the name of Royal Government of Bhutan."

As a result of above discussion, we are of the opinion that the view taken by the learned single Judge does not appear to be erroneous so as to warrant interference in this appeal. Consequently, the appeal is dismissed being without any merit. There shall be no order as to cost.

