
(2010) 10 KL CK 0088
In the High Court Of Kerala
Case No : W.A. No. 1464 of 2010

John Kennedy

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 14-10-2010

Acts Referred:

Kerala Tax on Paper Lotteries Act, 2005 — Section 2, 2(1), 6, 7

Citation : (2010) 4 KLT 629

Hon'ble Judges : Thottathil B. Radhakrishnan, J; P. Bhavadasan, J

Bench : Division Bench

Advocate : P.S. Raman, C.A. Sundaram, Rajiv Nayyar, Abhishek Manu Singhvi and A.M. Shaffique, P.V. Surendranath, Sijo George and Harisankar V. Menon, for the Appellant; L. Nageshwara Rao K. Vinod Chandran, Spl. Government Pleader and Jose Joseph, for the Respondent

Judgement

Thottathil B. Radhakrishnan, J.—These Writ Appeals are filed challenging the judgment in W.P.(C) No. 25632/10. The writ Petitioner, a proprietary concern by name Megha Distributors, is the Appellant in W.A. No. 1464/10. We will refer to him hereinafter, as Megha. W.A. No. 1470/10 is filed by the seventh Respondent in the Writ Petition, the Royal Government of Bhutan, hereinafter, the Bhutan Government. W.A. No. 1519/10 is filed by the State of Kerala and its officers, who were among the other Respondents in the Writ Petition. W.A. No. 1769/10, which has come up with leave having been granted, is filed by some of the sellers of paper lottery tickets in the State of Kerala.

2. The Bhutan Government entered into an agreement on trade, commerce and transit with the Government of the Republic of India. In W. A. No. 88/07, a Division Bench of this Court held that the treaty between the Government of India and the Bhutan Government, has the status of a law just like any other legislation and the treaty was entered into between the two countries, taking into consideration, the age old ties, with a desire to strengthen it. It was unequivocally held that in terms of the said agreement and the protocol to the

agreement, free trade and commerce in terms of that international agreement includes 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 on the territories of Bhutan and India, as the case may be. This situation, even on facts, is not disputed before us. Therefore, the Bhutan Government is entitled to sell Bhutan lottery tickets in India and such sale will be subject to the laws in force in the territories of India. Hence, the sale of Bhutan lottery tickets within the territory of the State of Kerala would be governed by the Lotteries (Regulation) Act, 1998, hereinafter referred to as the "Central Act", the Rules framed thereunder, namely the Lotteries (Regulation) Rules, 2010, hereinafter, the "Central Rules", the Kerala Tax on Paper Lotteries Act, 2005, for short, the "Tax Act" and the Rules and Regulations framed thereunder and such other laws that may be applicable to sale of lotteries in the State of Kerala from time to time. This position is also not in dispute.

3. By Ext.P1(a), the competent authority had issued a certificate of registration to the writ Petitioner-A. John Kennedy (Megha Distributor) as a promoter u/s 7 of the Tax Act, subject to the provisions of the said Act and Rules, including those enumerated in Ext.P1(a) certificate, which is dated 7.7.2005 to be valid until cancelled. Ext.P1 application, on the basis of which ExtP1(a) certificate was issued, shows that the certification was sought for as promoter-distributor of the Sikkim and Bhutan lotteries.

4. The Writ Petition was filed in the wake of the refusal of the appropriate authority under the Tax Act to collect the levy payable by Megha, as the promoter of Bhutan Government. Megha, therefore, sought the issuance of a writ of mandamus on the premise that by refusing to accept the levy payable under the Tax Act, the authorities are unlawfully preventing the right of the Bhutan Government, in terms of the International treaty and of Megha, as its promoter, to bring Bhutan lottery tickets into the territory of the State of Kerala and get involved in the trade of Bhutan Government lottery tickets in accordance with the International Treaty and the laws applicable in India, namely, the Central Act and the Rules and Regulations framed thereunder. The writ Petitioner stands to assert that it is the promoter certified as per Ext.P1(a) and therefore, there is a legal obligation cast on the statutory authorities to receive payments in terms of the Tax Act.

5. We make reference in this judgment only to the case of Megha as regards Bhutan Government lottery because the issue relating to the sale of lottery tickets of the State of Sikkim no more survives since such claim is given up as of now before us and the thrust of the appeals filed by Megha and the Bhutan Government were only in relation to their claims, relatable to lotteries of Bhutan Government.

6. The State of Kerala and the authorities under the Tax Act took the stand before the learned Single Judge that they have materials with them to show that there are violations of the provisions of the Central Act and the Rules, in relation

to different aspects. They also projected a case that they had information and materials to show that the Bhutan Government has given exclusive rights to yet another person, namely Monica Enterprises and therefore, the Petitioner Megha cannot continue to profess to be the agent or promoter of Bhutan Government and claim entitlement to pay tax and sell Bhutan lottery tickets on behalf of the Bhutan Government in the State of Kerala. Hereinafter, we would call the said third person-Monica Enterprises, who is not a party to this proceedings, as Monica.

7. An officer of the Bhutan Government had filed a counteraffidavit before the learned Single Judge, supporting the stand of Megha.

8. The learned Single Judge found that on the basis of the law governing the field, including the pronouncements of the Honourable Supreme Court of India in *Maganbhai Ishwarbhai Patel etc. Vs. Union of India (UOI) and Another,)* and *B.R. Enterprises Vs. State of U.P. and Others,)* as also the provisions of the Central Act and Central Rules, the Government of the State of Kerala and the authorities under the Tax Act did not have any authority to probe into the alleged violations of the provisions of the Central Act and the Central Rules and there was no reason, even on facts, to refuse to treat the writ Petitioner-Megha as the promoter of Bhutan Government in view of Ext.P1(a) certificate and on the stand taken by the Bhutan Government. Accordingly, the learned Single Judge held that the authorities under the Tax Act are bound to receive payment of the levy due under that Act from Megha.

9. However, the impugned judgment further proceeds to suggest that there is an apparent conflict between certain provisions of the Central Act and the Central Rules regarding the total number of draws. Taking into consideration, the social scenario and the evil impacts including the addictive tendency of paper lotteries, the learned Judge proceeded to consider as to how many draws could there be for a State conducting lotteries in terms of the Central Act and held that a State can conduct only one draw per week. It was noticed that an objective and purposive construction of the Central Act in the backdrop of its social setting has necessarily to overdrive in a contrary prescription in the Central Rules. Thus, it was concluded that the Bhutan Government lottery could have only one draw per week, all schemes put together. Accordingly, while directing the authorities under the Tax Act, to receive levy as payable by Megha, in terms of that Act, it was directed that Megha could pay tax on behalf of the Bhutan Government, as its promoter, only for such number of draws benchmarked as one draw per week in the case of ordinary lotteries and six draws for bumper lotteries. In support of that view, the learned Judge also made reference to expression by the Division Bench of this Court in the judgment in *W.A. No. 2011/05* and connected cases to the effect that "State can run only 52 ordinary lotteries and six bumper lotteries in a year". We may immediately mention that there is controversy as to whether the said expression in *W.A. No. 2011/05* is part of the ratio decidendi, or it is an obiter, or a passing observation, and also whether judicial discipline obliges us to

follow it, unless of course, we are unable to reconcile ourselves with that statement.

10. It is in the aforesaid context that the Bhutan Government has filed its Writ Appeal, essentially supporting the plea of Megha in its appeal, that the learned Single Judge was not within authority to have adjudicated on the vires of the Central Rules and at any rate, the interpretation of the Central Act and the Central Rules by the learned Single Judge, is wrong.

11. The State Government and its officers, who are authorities under the Tax Act, appeal against the finding in the impugned judgment that Megha is entitled to pay the levies due to the State from the Bhutan Government and be the promoter of the Bhutan Government, on the strength of Ext.P1 certification and the consequential direction based on such finding. The appeal by some of the sellers of paper lottery tickets, is on the premise that the interpretation given in the impugned judgment to the Central Act and Central Rules, essentially curbing the total number of draws and the bumper draws, goes a long way in adversely affecting the socially and economically challenged sector of the society. It is pointed out that at least to a good extent, it is those below the poverty line or belonging to otherwise challenged and marginalised sectors, who ultimately sell the paper lottery tickets. Further, it is also suggested that physically handicapped and similar people also generate some income for their sustenance, by selling lottery tickets.

12. We heard Senior Advocates C.A. Sundaram and P.S. Raman, assisted by Adv. Sijo George, on behalf of Megha; Senior Advocates Abhishek Manu Singhvi and Rajiv Nayyar, assisted by Adv. Harisankar V. Menon, on behalf of the Bhutan Government and the Senior Advocate L. Nageswara Rao and Adv. Vinod Chandran, the learned Special Government Pleader for Taxes for the State of Kerala. We heard Adv. P.V. Surendranath on behalf of the lottery ticket sellers.

13. On the basis of the arguments advanced, the issues arising for decision get classified into two:

(A) Was the learned Single Judge justified in holding that the authorities under the Tax Act are obliged to collect levy under that Act to be paid by Megha on behalf of the Bhutan Government?

(B) Is the interpretation given in the impugned judgment regarding the provisions of the Central Act and the Central Rules, thereby holding that there can be only 52 draws and six bumper draws in an year, sustainable in law?

We proceed to decide the aforesaid issues separately.

14. In re Issue (A): As of now, this issue stands answered by the learned Single Judge in favour of Megha. Therefore, we will first consider the arguments advanced on behalf of the State of Kerala and its officers against such finding and direction. It was contended on behalf of the State that what actually happened before the learned Single Judge was that there was essentially lack of

opportunity to place the relevant materials including the pleadings and the Division Bench during the course of proceedings, had extended freedom to the State Government to make such enquiry as it may deem necessary and place report before this Court. The authorities under the Tax Act had produced two reports of facts that have come to them during the course of the enquiry and on the basis of such materials, further enquiry was required. It is pointed out that one crucial fact that has surfaced in the enquiry by the officers of the State of Kerala is that the Bhutan Government has given the exclusive purchasing rights in relation to its lottery tickets for sale in India, to Monica, which, in turn, has given the vending rights to different distributors. However, there is nothing to show that Monica has given any authorisation to Megha to be the promoter or agent for vending Bhutan lottery tickets in the State of Kerala. In that premise, it is contended that the Bhutan Government, after having parted to Monica, the sole right to purchase the tickets, cannot be heard to contend that it has appointed Megha to continue as its promoter. Dilating on the jurisdictional aspects, it was argued that there is fair room within the provisions of the Tax Act to enable the competent authorities to ensure that the amounts due as levy under the Tax Act are paid only by such person, who is the real promoter of the Bhutan Government.

15. On behalf of the Bhutan Government, it was argued that following the earlier interim orders in the Writ Appeal, the Director of Lotteries of the Bhutan Government had filed a further specific additional affidavit in the Writ Appeal, asserting the stand of the Bhutan Government that Megha is its promoter for the State of Kerala and that on the face of the provisions of the treaty between the Bhutan Government and the Government of India and in the light of the provisions of the Central Act and Central Rules, as interpreted by the Central Government, there is no room for the State to make any enquiry whatsoever, touching any matter that would fall within the purview of the Central Act and all that the State Government could ensure is that the promoter who has been issued the certificate, continues to be the promoter, which fact, according to the Bhutan Government, is beyond challenge in the light of the additional affidavit that has been placed before the Court in this case.

16. On behalf of Megha, it was argued that there was no jurisdictional fact on the basis of which the authorities under the Tax Act could make any enquiry and say that the whole exercise is a fishing or rowing exercise motivated by considerations extraneous to the field governed by the Tax Act. It is pointed out that the nature of objections raised by the State Government and its officers is one, which commends upon the contractual obligations between the Bhutan Government, Monica, other intermediaries and Megha; which obligations cannot be subjected to any scrutiny by the officers under the Tax Act.

17. On the basis of the aforesaid submissions, it emerges without doubt that the writ Petitioner Megha was appointed by the Bhutan Government as its promoter and on the strength of such appointment, Megha was given Ext.P1 (a) certificate

in 2005 by the competent authority under the Tax Act. Section 7 of the Tax Act provides for registration of promoters. Every promoter, selling lottery tickets, shall get himself registered under the Tax Act, following the prescriptions under that Act. The renewal of registration is from year to year, on payment of prescribed fee and security, until the registration is cancelled. These provisions categorically show that once registration is granted, it continues to be in force, unless it is cancelled.

18. Section 2(a) of the Tax Act defines "agent" as one who has entered into an agency agreement for the sale of lottery tickets in the State of Kerala and includes registered agents, appointed to sell lottery tickets in the State. The agency agreement is to be entered into with the State or Central Government or any Union Territory or any country, which has a bilateral agreement or treaty with the Government of India for the sale of lottery tickets in the State. In distinction to that provision, the term "promoter" is defined in Section 2(l) of the Tax Act to mean the Government of India, the Government of a State or Union Territory or any country which has a bilateral agreement or treaty with the Government of India for organising, conducting or promoting a lottery and includes any person appointed for selling lottery tickets by the Government in the State of Kerala on its behalf where such Government is not directly selling lottery tickets in the State. Therefore, when the Government of India or the Government of a State or the Union Territory or any eligible country under a bilateral agreement does not sell its lottery tickets directly in the State of Kerala, it is authorised to appoint any person to sell lottery tickets and a person so appointed, is a "promoter" for the purpose of Section 2(l) of the Tax Act. This is in contra distinction to the concept of "agent" in Section 2(a), where an agreement in the form of an agency agreement or otherwise is required. This clear dichotomy in the statutory expressions used by the Legislature in Section 2(a) and Section 2(l) of the Tax Act is sufficient to hold that when the Bhutan Government stands to assert in the form of an affidavit that Megha is its promoter, there is no reason for the authorities under the Tax Act to take a contradicting stand or to assume any jurisdictional fact to initiate any proceedings on such premise or to refuse to receive tax from Megha as the promoter of Bhutan Government. In this view of the matter, we have no hesitation to hold that the authorities under the Tax Act cannot insist on the scrutiny of any agreement, which may or may not be there, between the Bhutan Government and any person appointed by it as its promoter, when the Bhutan Government itself, stands to say that it has appointed Megha as its promoter.

19. We have perused the enquiry reports also. The reports tend to suggest that the State of Kerala and its officers are of the view that the Bhutan Government has a sole purchaser agreement with Monica for the whole of India and that Monica is given the power to decide the sellers and therefore, the Bhutan Government cannot recognise Megha as its promoter without a specific agreement between Monica and Megha, in that regard. The report itself suggests the existence of different other buying and selling entities in between. Therefore,

even if we were to look at the whole issue from the angle of the interest of the State of Kerala, what has to be ensured is that it is the Bhutan Government which wants to do commercial activities in lotteries in the State of Kerala on the strength of the bilateral treaty with the Government of India, that has to be ultimately made answerable for payment of any tax or levy due in terms of the Tax Act. When the Bhutan Government stands to say that such obligation will be discharged through Megha, it does not lie in the mouth of the State Government or its officers including the authorities under the Tax Act to say that they would not receive tax from Megha, on behalf of the Bhutan Government. The levy and collection of tax on paper lotteries is a statutory obligation in terms of Section 6 of the Tax Act. When the Bhutan Government points out Megha as its promoter, there is no reason, why the State Government and the authorities under the Tax Act shall not act on it.

20. During the course of arguments, it was also pointed out that on 17.9.2010, the Principal Secretary to Government of Kerala, Taxes (H) Department, had issued a letter to the Joint Secretary in the Ministry of External Affairs, Government of India, New Delhi, raising certain queries in relation to the lotteries of Bhutan Government and that the Director in the Ministry of Home Affairs had addressed the Principal Secretary Taxes (H) Department of the Government of Kerala on 29.9.2010, providing certain information. Such materials are absolutely necessary for a complete decision on this particular issue. Therefore, the Bench also wanted to see such materials, which were not until then, placed before this Court. Those letters have been placed on record along with a memo dated 11.10.2010, filed on behalf of the State of Kerala with C.F. No. 5291/10. We have perused those letters. We admit them as evidence and mark them as Exts. A-1 and A-2 respectively in W.A. No. 1519/10 (the appeal filed by the State of Kerala and others). In Ext. A-2 letter, the Ministry of Home Affairs in the Government of India has informed the Principal Secretary, Taxes Department that Megha is a sole proprietary concern and it is the authorised promoter for the sale of lottery tickets of Bhutan Government in the State of Kerala. It further states that the Bhutan Government has signed an agreement with Monica and the Bhutan Government stands by the earlier factual situation that Megha is its authorised promoter for the State of Kerala since 2005 and that the Bhutan Government has not sent any communication to the State Government, stating that Megha is no longer the authorised promoter of Bhutan Government in the State of Kerala. Rule 3(1) of the Tax Rules provides that every person registered as a promoter and who discontinues or transfers his activities relating to lotteries or where the registration certificate is cancelled, shall forthwith surrender the certificate of registration. In the light of the specific stand taken by the Bhutan Government in its affidavit before us that it continues to retain Megha as its promoter and in the light of the information furnished by the Central Government to the State Government in that regard, we do not find any room for any further probe in the matter. In this context, the judgment of the Apex Court in Civil Appeal Nos. 6700-6701/08 relied on by Megha and the

Bhutan Government is also relevant since it supports the reliance that we place on the affidavit of the Bhutan Government.

21. Now, even if Monica is appointed as the sole purchasing agent of Bhutan lotteries for the whole of India and if Monica were to appoint an agent for the State of Kerala, whom would the State Government recognise as the promoter of the lotteries of Bhutan Government ? There has to be appropriate appointment or ratification by Bhutan Government, recognising the agent of Monica as the promoter of lotteries of the Bhutan Government. Without that, the State Government would not recognise any such agent of Monica as the "promoter" of Bhutan Government's lotteries, having defined in the definition of "promoter" in the Tax Act and the Central Act. On the face of the provisions of the Treaty that Bhutan Government has with the Government of India and in the light of the definition of promoter as contained in Section 2(I) of the Tax Act, a promoter can be appointed only by the Bhutan Government in relation to the sale of lottery tickets of Bhutan Government in the State of Kerala for the purpose of the Tax Act. There is no room for any intermediary, a sole agent, a sole purchaser or any other inter-meddlers in the commercial activities of the Bhutan Government, being involved in identifying the "promoter" of the lotteries of Bhutan Government in so far as the Tax Act is concerned. This is the inescapable conclusion on a clear reading of Section 2(I) of the Tax Act.

22. For the aforesaid reasons, the appeal of the State of Kerala, fails and the impugned judgment stands to that extent.

23. In re issue No. (B) On behalf of Megha, Bhutan Government and the ticket sellers, it was argued that the impugned judgment, in so far as it relates to the interpretation of the Central Act and Rules and the consequential finding that there could be only one draw of the lotteries of a State for one week is wrong. It was also argued on behalf of Bhutan Government and Megha that even in the absence of the Union of India on the party array, it was impermissible to have considered the question of vires of the relevant Central Rules and those Rules have been erroneously construed even ignoring some of the other provisions therein as also, some of the relevant provisions of the Central Act. It was also suggested that there was no indication even at hearing that the court would proceed to consider such an issue. It is stated that, in setting the Central Rules in the light of the Central Act, the State Governments including of the State of Kerala were consulted and materials would tend to indicate that even the State of Kerala had apparently no objection to the manner in which the Central Rules stands as regards the fixation of the number of draws per day. This submission is made in the wake of the State of Kerala supporting that part of the impugned judgment.

24. On behalf of the State of Kerala, it is pointed out that following the impugned judgment, the State of Kerala has trimmed down the number of draws of its lotteries in consonance with the declaration of law contained in the impugned judgment and the State would support the views in the impugned judgment

regarding the total number of draws that could be had. Dilating on this aspect, it was pointed out on behalf of the State that the Statement of Objects and Reasons and the social context which made it necessary to make the Central Act is a pointer to the fact that interpretation of the Central Act and the Central Rules have to be made only in a manner that would ensure securing the goal of that Act, which is to prevent the mischief attendant to the social challenge of lotteries being the reason for the undoing of many families, especially the poor daily wagers and low income groups, having regard to the temptation and the addictive nature of indulging in gaming by participating in lotteries.

25. The principles of law relating to interpretation of statutes of such nature are wellsettled. The regulation of lotteries provided by the Central Act is made by prescribing conditions, subject to which lotteries may be organised and by imposing prohibition of lotteries otherwise than those which are organised, conducted or promoted in terms of the conditions prescribed and provided for in Section 4 of the Central Act. The provisions of the Central Act prescribe penalties after identifying such Acts and/or omissions as would be offences in terms of that Act. When the plain language of the legislation does not admit of different interpretations, that is to say, when there is no ambiguity in the statute, the courts need not have to search for external aids to interpret the statutes. It is part of the judicial obligation to commence by presuming that a piece of legislation is valid. Equally so, with subordinate legislations. It is also salutary that in the process of adjudication, the courts would give effect to all provisions in a legislation. Harmony in construction and application of a legislative piece, would inexcusably, be one of the prominent among the intentions of any Legislature. In the attempt to harmoniously construe and apply the provisions of a legislation, if the court reaches at such an irreconcilable situation on the basis of any predominant view on the face of the legislation that may tend to create an unambiguous situation in the interpretative process, the immediate next attempt would be made to interpret using external aids. With the passage of time, this approach has gained acceptance and importance, bringing in the concepts of purposive interpretation in situations of any harm that would result out of a literal interpretation of a provision that falls for consideration. The learned Judges have also, with the passage of time, started to adopting a practice of arriving at a conclusion that is available on the face of the statute and then testing that conclusion, also on the touch stone of external aids attendant to the making of that legislative piece, to ensure for themselves that the conclusion arrived at is not at variance with the intention of the Legislature; the purpose of the legislation; the social context and needs; as also the constitutional vision in regard to a particular subject matter. These principles lie embedded also in the precedents referred to by either side, namely, *A. Manjula Bhashini and Others Vs. The Managing Director, A.P. Women's Cooperative Finance Corporation Ltd. and Another*,), *Muhammed Basheer Vs. Kannur District Co-operative Bank Ltd.*,), *Swantraj and Others Vs. State of Maharashtra*,) and *Babaji Kondaji Garad Vs. Nasik Merchants Co-operative Bank Ltd., Nasik and Others*,).

26. Rule 3(6) of the Central Rules provides 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 twenty four per day. The view taken in the impugned judgment appears to be that the provision in Section 4(h) of the Central Act that no lottery shall have more than one draw in a week is contradicted by R.3(6) of the Central Rules. By saying so, the conclusion arrived at is that there could be six bumper draws per calendar year and one draw per week for all the lotteries/draws of a State put together.

27. Section 2(b) of the Central Act provides that "lottery" means "a scheme, in whatever form and by whatever name called...." "Bumper draw of a lottery" is defined in Section 2(a) to mean "a special draw of lottery wherein the prize money offered is greater than the prize money offered in the case of other ordinary draw of lotteries". Therefore, a lottery means a scheme and a bumper draw of a lottery is a bumper draw in relation to a lottery that is a scheme. The prohibition of lotteries in Section 3 is against organising, conducting or promoting any lottery, save as otherwise provided in Section 4. That is not a restriction on the number of lotteries. The use of the word "any" in Section 3, in our view, essentially indicates that there is no restriction on the number of lotteries. We say this because the immediately succeeding Section 4 prescribes conditions subject to which lotteries may be organised and what are prescribed as conditions in Section 4 are conditions in relation to any lottery that may be organised, conducted or promoted. The condition in Section 4(e) that the State Government itself shall conduct the draws of all the lotteries is sufficient intrinsic legislative material to hold that the State Government is entitled to organise more number of lotteries than one. Similarly, the condition prescribed in Section 4(i) that draws of all kinds of lotteries shall be conducted between such period of the day as may be prescribed by the State Government is also a further pointer to the conclusion that a State Government can conduct different kinds of lotteries because it is one among the enumerated conditions in Section 4. The corresponding power of the State Government is also specifically granted in Section 12(2)(b) of the Central Act. The State Government means the Government which organises, conducts or promotes any lottery. In the context of Bhutan Government, the term "State Government" includes it also. Now, the Central Rules provides that the Organising State shall announce in advance, the information about matters in Clauses (a) to (j) of Rule 3(3) about every lottery. Rule 3(2) also provides that the State Government may organise a lottery or lotteries and the notification regarding the information about which we have already referred to earlier, that is in terms of Rule 3(3) has to be issued in relation to a lottery meaning thereby every lottery that an Organising State may organise. Similarly, Rule 3(4) of the Central Rules provides that in case an Organising State decides to organise more than one lottery, the procedure as provided in Sub-rule (3) shall be followed for each lottery. The Central Rules are framed invoking the power of the Central Government, u/s 11 of the Central Act, to make rules. Those rules, as they now stand, have to be deemed to run with

full effect. In the context of the materials in the Central Rules and the Central Act which provide for an Organising State to have more number of lotteries than one, the question would be only as to whether the condition in Section 4(h) is one that affects all lotteries or schemes of an Organising State put together or whether it applies on a scheme to scheme basis or lottery to lottery basis.

28. Taking Section 3 of the Central Act and Rule 3 of the Central Rules into consideration, it is beyond any shade of doubt that a State Government or an Organising State may conduct or promote any number of lotteries or schemes subject to the requirement that each of those lotteries or schemes satisfies the conditions prescribed in Section 4 and is organised only following the procedure prescribed in the Central Rules. The requirement that no lottery shall have more than one draw in a week as provided for in Section 4(h) of the Central Act therefore operates on a lottery to lottery basis or scheme to scheme basis and hence it does not have any impact on the total number of lotteries or schemes that an Organising State could organise and every bumper draw of a lottery is a bumper draw in relation to any such lottery or a scheme. This means that every lottery or scheme of an Organising State can have one draw in a week and six bumper draws in an year. The prescription in Rule 3(6) of the Central Rules does not, therefore, in any manner contradict the outer limit that may be available in terms of Section 4(h) of the Central Act. We are therefore unable to sustain the contrary views and findings in the impugned judgment.

29. This takes us to the much debated issue as to the binding nature of the Division Bench judgment of this Court in W.A. No. 2011 of 2005 and connected cases wherein it was stated that the State can run only 52 ordinary lotteries and 6 bumper lotteries in an year. Firstly, we find that such an issue did not arise for consideration in that case. Decision on any such issue was not necessary to answer the focal question in that Writ Appeal, namely, the question of online lottery tickets and ban thereof. In the context of the questions arising for decision in these Writ Appeals, we do not find any utility for the aforesaid judgment being applied as a precedent. The ratio decidendi of that is not relevant for the decision of these Writ Appeals. Without labouring much, we can conclude that there is no principle of law laid in the judgment in W.A.2011/05 and connected cases which can be applied as the precedent to hold that an Organising State can run only 52 lotteries in an year. However, we may notice that we find formidable support to the view taken by us on the interpretations of the Central Act in a judgment of the Karnataka High Court-judgment dated 11.3.2004 in W.P.(C) No. 28018 of 2003.

30. For the aforesaid reasons, the finding in the impugned judgment that Megha can deposit amounts payable under the Tax Act only by restricting the total number of draws of all its lotteries to be only one per week with six bumper draws an year, is liable to be vacated.

Certain further aspects:

31. There are certain other aspects which emerge on the pleadings, materials and submissions made in court.

32. The Statement of Objects and Reasons of the Central Act was referred to on behalf of the State of Kerala and on behalf of Megha Distributors and the Bhutan Government. The legislative history, the constitutional setting and the need to have such a legislation in place were emphasised making reference to the SOR. The approach made by the learned Single Judge was also motivated by the urge to reconcile the commercial interest of an Organising State or its promoter in running the lotteries and the vulnerable nature of the gaming involved in lotteries which may lure the marginalised sector and would ultimately affect the poorer sections of the community. In fact, the temptation offered by the lotteries had proved to be the undoing of many families, especially poor daily wagers and low income groups. This fact is recited in the SOR of the Central Act itself. While the State would say that this approach of the makers of the legislation should guide this Court in construing the said statute to hold that there could be only one draw per week, the argument advanced on behalf of Megha Distributors and Bhutan Government was that the SOR is clear in as much as, after noticing that there are different types of lotteries, the malady that was facing the society was found to be as a result of the single digit and instant lotteries. It was, therefore, submitted on behalf of Megha Distributors and Bhutan Government that other types of lotteries, including paper lotteries, were not the motivating factor and were not in the contemplation of the Legislature, except to the extent that restrictions and regulations were needed. We may notice that the Central Rules which have now come, also go to regulate and provide for on line lotteries also, apart from paper lotteries. We have already held that reliance on the SOR is not necessary to decide the lis in hand and we have rendered our conclusions above, on the interpretation of the statute, depending upon the clear expressions contained in the enactment. But the view expressed in the impugned judgment that the paramount importance is not augmentation of revenue and lotteries should not be held in a manner that would affect the poor and illiterate people is a guiding beacon for all concerned. A socialist society cannot afford any situation where the economically challenged or otherwise marginalised should be placed in vulnerable situations and exposed to exploitation for commercial purposes. A cohesive consideration of the provisions of Part III and Part IV as to Fundamental Rights and Directive Principles of State Policy, understood in the backdrop of the core constitutional doctrines necessarily makes it the national need that interests of all parties are appropriately balanced. Concentration of wealth in a few is against the constitutional vision. Providing for all is part of the constitutional vision. In this process, deprivation of vulnerable sectors by exposing them to the temptation offered by lotteries should always be under the continued watch of the Governments. It is in this context that the State Government as well as the Central Government would stand duty bound to do the needful to ensure that no provision of the Central Act and the Rules is violated. In terms of the law as it is settled, action can come from the Central Government only, though the State

Government would not be powerless to inform the Central Government by even bringing specific materials within its knowledge to the notice of the Central Government. In this context, Exts. A1 and A2 assume some importance. Ext. A1 is the communication by the Government of Kerala to the Ministry of External Affairs in the Union Government. It contains a specific query as to whether the tickets of the Bhutan Government's lotteries are printed in the security press as prescribed under Rule 3(5) of the Central Rules. However, Ext. A2 reply by the Central Government, through the Ministry of Home Affairs, to the Kerala State Government does not contain the answer to that issue.

33. The agreement on trade, commerce and transit between the Royal Government of Bhutan and the Government of the Republic of India and the protocol to that agreement as made available to us and in the manner in which it was construed by the Division Bench in an earlier litigation in W.A. No. 88/07 referred to us in the opening paragraphs of this judgment would show that what is provided for is free trade and commerce which term, going by the protocol to the agreement, 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 territories of the Kingdom of Bhutan and India, as the case may be. Is it that Bhutan lottery tickets are to be printed in any place in India and sold? Or, is it that the lottery tickets which are Bhutan lottery tickets can be sold in India thereby meaning that Bhutan lottery tickets can be brought to India on the strength of the said international treaty and protocol to that agreement and sold in India? If the answers to these two queries are in the affirmative, printing Bhutan lottery tickets in India is not conceived. But, if it were so under any other further agreement or protocol document or even under any other law that exists, it appears to be obligatory to ensure that the printing is made only in high security press, included in the panel of the Reserve Bank of India or the Indian Banks Association since Rule 3(5) of the Central Rules prescribes that the paper lottery tickets and stationery on which online lottery tickets are issued shall be printed by the Organising State at a Government Press or any other high security press included in such panel. The need to ensure that printing is done in terms of the relevant prescriptions is of grave national importance. The requirement is not one that is confined to the management of the lotteries. Any situation aiding free flow of unaccounted money has necessarily to be checked. Taxation, including of income, is a matter of grave revenue concern. Even in terms of the bilateral treaty and the protocol therein, the Bhutan Government stands to accept that it shall be governed by the Indian laws regarding lotteries which means that it has to act in terms of the Central Act and Rules. Therefore, the regulation to the printing of the lottery tickets of Bhutan Government is a matter of which the competent authorities should necessarily be concerned. There were submissions made with all responsibility on either side that the conduct of lotteries needs to be regulated appropriately and this itself is the fundamental purpose of the Central Act and Rules. Therefore, the query of the State Government in that

regard, not having been answered and communicated appropriately, the State Government would be justified in bringing up such issues before the Central Government.

34. We also find from the records that the State Government has specific reports and complaints based on facts regarding violation of the provisions of the Central Act and Rules in the matter of conduct of lotteries.

35. The power to take action under the Central Legislation may be exclusively with the Centre. But when such issues are raised in relation to the conduct of lotteries by a particular Organising State, including a foreign State entitled to trade or commerce under the international trading in a particular territory, any complaint of the State Government of a territory regarding the violation of the provisions of the Central Act and Rules is a matter that the competent authorities under the Central Act and Rules have to consider with all seriousness and by making earnest efforts because, the ultimate goal to be achieved is to ensure that the object sought to be achieved by the said enactment is fulfilled. Also, the age-old ties between the two countries and the need to strengthen them, cannot be ignored. It is stated that as of now, the objections of the State Government in this regard are still pending with the Central Government. It is up to the State Government to ensure that the Central Government is moved for action or reply in that regard, having regard to the serious nature of the issues raised.

36. In the result:

(i) The judgment of the learned Single Judge directing the State of Kerala and the authorities under the Tax Act to receive payments from Megha treating him as the promoter of Bhutan Government is affirmed.

(ii) The direction in the impugned judgment that payments shall be made by restricting the number of draws as stated therein is vacated.

(iii) W. A. Nos. 1464 and 1470 of 2010 are allowed to the aforesaid extent.

(iv) W. A. No. 1769 of 2010, taken on file with leave having been granted is allowed to the aforesaid extent as to the declaration of law as stated in this judgment regarding the interpretation of the Central Act, Central Rules, the Tax Act and the Tax Rules.

(v) W.A. No. 1519/10 is dismissed.

(vi) The impugned judgment was delivered by the learned Single Judge on 30th August 2010. Advance tax payable for the month of October, 2010 was to be paid on or before the 30th September, 2010. There were interim orders issued pending Writ Appeal, to receive amounts that may be deposited. However the demand drafts were returned on the premise that interest was not paid and certifications were also not placed. Those were not grounds on which the competent authority could have refused to receive amounts payable under the Tax Act, particularly when there was a direction of this Court to receive it if paid

on behalf of the Bhutan Government. This situation is only the making of the State Government and its officers, by returning the amounts even on the face of judicial order, passed interim, in the appeal. In such circumstances, we direct that the tax due for October, 2010 shall be received from the Petitioner as promoter of Bhutan Government without any claim for interest and be treated as paid on or before the last date on which such amount was due for the month of October, 2010 as per the rates then applicable. The competent statutory authority from among the Respondents is directed to receive such amounts, issue receipts and permit immediate transit of the tickets of Bhutan lottery into the State of Kerala for the month of October, 2010. Such remittance would entitle for lawful transit of the tickets to Kerala for sale.

(vii) The parties will suffer their respective costs.