(2007) 04 KL CK 0022

In the High Court Of Kerala

Case No : W.A. No''s. 631 and 638 of 2007

John Rose, T. APPELLANT

Vs

State of Kerala and Others RESPONDENT

Date of Decision : 11-04-2007

Acts Referred:

Kerala Tax on Paper Lotteries Act, 2005 — Section 2(1)
Lotteries (Regulation) Act, 1998 — Section 4

Citation : (2007) 04 KL CK 0022

Hon'ble Judges : M.N. Krishnan, J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : Nalini Chidambaram, V.V. Nandagopal Nambiar, T.P. Pradeep and Preeja P. Vijayan, for the Appellant; V.V. Ashokan, Spl. Govt. Pleader (Taxes), John Varghese Asst. S.G. and P.R. Raman, for the Respondent

Judgement

K.S. Radhakrishnan, J.—Indian Union is federal, and in our constitutional set up, the Central Government is amphibian, it can move either in the federal or unitary plane. Constitution makers were fully aware that fee economic unity was absolutely necessary for fee stability and progress of federal polity which is necessary for the proper governance of the country. Respective States may be ruled by political parties, have different ideologies and theories and may have local and regional pulls and pressure, both economical and political, but may not be at fee cost of federal unity. The State of Arunachal Pradesh, a part of Indian Union, is a State situated in the north-eastern part of the country. Mutual respect between the States is the bedrock on which the unity of the country rests. Constitutional Courts set up in the country cannot ignore the above principles, and they treat the State of Kerala and the State of Arunachal Pradesh in the same footing and apply the law.

2. We may at the outset express our anguish in the manner in which the taxing authorities functioning under the Kerala Tax on Paper Lotteries Act, 2005 have ignored the various documents produced for and on behalf of the State of Arunachal Pradesh. Learned Single Judge described a letter sent by the

Department of State Lotteries, Government of Arunachal Pradesh as sham document without any legal or factual basis. The affidavit filed by the Secretary (State Lotteries) Government of Arunachal Pradesh, should not have been ignored in the absence of any contra evidence.

3. Writ petition was preferred seeking a writ of mandamus directing Respondents 3 to 5 to accept the advance tax from the Petitioner for the period from 15-1-2007 onwards in respect of the lotteries organized, conducted and promoted by the State of Arunachal Pradesh and also for a direction to 4th Respondent to pass orders on Ext. P-6 regarding registration of the Petitioner as promoter for selling the lottery tickets organized by the State of Arunachal Pradesh and also for other consequential reliefs. While the writ petition was pending, application for registration of the Petitioner as promoter was rejected by the 4th Respondent in the writ petition on the ground that the Petitioner is not a promoter falling within the definition of Section 2(1) of the Kerala Tax on Paper Lotteries Act, 2005, an order which has been challenged in the writ petition. The learned Single Judge felt that Ext. P-1 is a sham document which only speaks of appointment of the Petitioner by the agent''s agent of the Government of Arunachal Pradesh and hence Petitioner does not satisfy the requirement of Section 2(1) ofthe Act for claiming registration. Learned Single Judge took the view that the denial of registration to a stranger like the Petitioner who is not eligible to get registration in terms of the provisions of the Kerala Act cannot be described as an act of hostility against the sale of tickets of lotteries organised by the Arunachal Pradesh Government in the State of Kerala. Aggrieved by the judgment of the learned Single Judge the writ Petitioner preferred W.A. 631 of2007 and the Director of Lotteries, Arunachal Pradesh State Lotteries preferred W.A. 638 of 2007.

4. Smt. Nalini Chitambaram, senior Counsel appearing for the Appellant in W.A. 631 of 2007 submitted that the learned Single Judge has not properly appreciated the scope of Section 2(1) of the Kerala Tax on Paper Lotteries Act, 2005. Counsel submitted that on a perusal of all documents and materials placed before Court would show that the Government of Arunachal Pradesh has recognised Petitioner as a person appointed for selling lottery tickets of the Government of Arunachal Pradesh in the State of Kerala on its behalf. Counsel submitted, learned Single Judge has committed an error in holding that Petitioner can be registered as a promoter under the Kerala Tax on Lotteries Act only if he is appointed directly as the selling agent in the State ofKerala. Learned senior Counsel also submitted, the learned Single Judge has not properly appreciated the letter dated 13-12-2006 produced on behalf of the State of Arunachal Pradesh before the Court, which would indicate that Petitioner has been appointed as a person for selling lottery tickets of State of Arunachal Pradesh in the State ofKerala. Senior Counsel also submitted that in any view of the matter the taxing authorities functioning under the Kerala Tax qn Paper Lotteries Act, 2005 have no Jurisdiction to prevent sale of the Arunachal Pradesh lottery tickets in the State of Kerala since Kerala is not a tottery free zone.

5. Sri P.S. Raman, senior Counsel appearing for the Director of Lotteries, State of Arunachal Pradesh submitted that the learned Single Judge has committed an error in ignoring the letter issued by the Government of Arunachal Pradesh recognising the Petitioner as a person who has been appointed for selling lottery tickets ofArunachal Pradesh in the State of Kerala. Senior Counsel submitted that the Kerala Tax on Paper Lotteries Act is not a regulatory legislation which enacted only for the purpose of collection of tax. So the taxing authorities have no jurisdiction to examine as to whether Petitioner has satisfied the definition of ''promoter'' u/s 2(1) of the Act or not especially, when the appointing authority has recognised him as a person authorised to sell lottery tickets of Arunachal Pradesh in the State of Kerala. Senior Counsel also submitted, learned Single Judge has Med to appreciate the law of agency and so long as,"the principal, that is the Government of Arunachal Pradesh has permitted its distributor to appoint local agents and has recognised the local agent as a person to sell lottery tickets in the State of Kerala that will be sufficient authority for the Petitioner to carry on his business in the State ofKerala. Counsel submitted that the learned Single Judge was not Justified in taking the view that there is nodirect appointment of the Petitioner as a promoter within the meaning of Section 2(1) of the Act Learned senior Counsel relied on the following decisions in support of his contention on the powers of Qamar Shaffi Tyabji Vs. The Commissioner, Excess Profits Tax, Hyderabad, , Union of India (UOI) Vs. Amar Singh, , Chairman, Life Insurance Corporation and Others Vs. Rajiv Kumar Bhasker, , Tashi Delek Gaming Solutions Ltd. and Another Vs. State of Karnataka and Others, .

6. Sri V.V. Ashokan, Spl. Govt. Pleader (Taxes) on the other hand, supported the judgment of the learned Single Judge and submitted that the taxing authority functioning under the Kerala Tax on Paper Lotteries Act, 2005 have jurisdiction to examine as to whether a person who applies for registration fells within the definition clause u/s 2(1) of the Act. Further, Counsel also submitted that the documents produced before the taxing authorities would not show that the Petitioner was directly appointed as promoter for selling lottery tickets of State of Arunachal Pradesh in the State of Kerala. Counsel submitted, unless a person is directly appointed by the Government of Arunachal Pradesh to sell their lottery tickets in the State of Kerala he cannot be treated as promoter within the meaning of Section 2(1) of the Act.

7. We are afraid the taxing authority has not properly appreciated the scope of Section 2(1) of the Kerala Tax on Paper Lotteries Act, 2005 and other materials furnished before him. State of Arunachal Pradesh is a State which thrives on the business of selling its lottery tickets in other State in India which are not lottery free zone States. Income generated by the sale of lottery tickets is utilised for developing its infrastructure. State of Arunachal Pradesh is conducting their lotteries in accordance with Section 4 of the Lotteries Regulation Act, 1998. Facts would indicate that the State of Arunachal Pradesh has authorised and appointed Arunachal Pradesh Relief and Welfare (Charitable) Society as the main distributor of lottery tickets for better governance and have authorised the said distributor

to appoint further Sub-distributor, stockist/sole selling agent/promoter. For the lotteries in question conducted by the State of Arunachal Pradesh the society has appointed M/s Sri Krishna Agencies as the Sub-distributor and Krishna Agency has appointed the Petitioner as its Sub-agent for sale of lottery tickets in the State of Kerala. In the affidavit filed by the Secretary to the Government, State Lotteries, Arunachal Pradesh it has been specifically stated as follows. "Petitioner is the only promoter/stockist in the State of Kerala directly authorised/appointed by the State of Arunachal Pradesh to market/sell Arunachal Pradesh State Lotteries of specific schemes organized and conducted by the State of Arunachal Pradesh". Sixth Respondent has issued letter No. LOT-111/06, dated 13-12-2006 and No. LOT-111/06-1656, dated 2-1-2007 confirming the same. We are of the view, when the Department of State Lotteries, Arunachal Pradesh has filed an affidavit before this Court as well as before the taxing authorities stating that they have recognised the Petitioner as a person for selling their lottery tickets in the State of Kerala, the taxing authorities functioning under the Kerala Tax on Paper Lotteries Act, 2005, in our view, was not justified in ignoring those documents and then to go for a roving enquiry.

8. Kerala Tax on Paper Lotteries Act, 2005 was enacted to provide for the levy and collection of tax in the State of Kerala for the conduct pf paper lotteries and for matters connected therewith or incidental thereto. Act is not a regulatory legislation, but primarily intended for levy and collection of tax. Apex Court in B.R. Enterprises Vs. State of U.P. and Others, has held that a State Legislature cannot prohibit the conduct of lotteries by other States unless the State is made a lottery free zone, consequently a State law on taxation cannot provide that "on cancellation of registration the promoter shall not be entitled to sell lottery tickets within the State". Taxing authorities can cancel registration of a promoter under the Act, if he defaults payment of tax or refused to take registration. So far as this case is concerned taxing authority is making a roving enquiry to ascertain whether Petitioner has been appointed by the Government of Arunachal Pradesh. We are ofview, such an enquiry is totally uncalled for in view of the affidavit filed on behalf of the State of Arunachal Pradesh. The reasons stated by the taxing authorities in Ext. P-11 notice dt. 5-1-2007 are wholly unsustainable.

9. We have perused the various documents produced, and examined the decisions cited to support the Law of Agency. Apex Court in Rajiv Kumar Bhasker''s case (supra) referred to a passage in Bowstead and Reynolds on Agency, 17th Edn. and noted that where a person, by words or conduct, represents or permits it to be represented that Anr. person has authority to act on his behalf, he is bound by the acts of that other person with respect to anyone dealing with him as an agent on the faith of any such representation, to the same extent as if such other person had the authority that he was represented to have, even though he had no such actual authority. State of Arunachal Pradesh has recognised the Petitioner as a promoter for selling its lottery tickets in the State of Kerala which in our view is a complete answer to the doubt expressed by the taxing authority in Ext. P-11.

10. The definition clause u/s 2(1) of the Act, which is extracted below may also be examined.

2(1) ''Promoter'' means the Government of India or Government of a State or a Union Territory or any country who had entered into a bi-lateral agreement or a treaty with the Government of India for organizing, 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.

(emphasis added)

Petitioner in this case would fall under second part of the definition clause, that is "any person appointed for selling lottery tickets", Distributors, Stockists, Selling Agents, Sub-distributors, Sub-agents etc. would fit in the expression "any person appointed for selling lottery tickets" especially when the principal has recognised their authority to act on its behalf. We however, make it clear that if the Petitioner is selling the lottery tickets in violation of Section 4 of Lottery Regulation Act, it is always open to the Central Government to take appropriate action and the State Government can always bring it to the knowledge of the Central Government. The above being the factual and legal position we are inclined to allow both these appeals and set aside the judgment of the learned Single Judge and quash Ext. P-11 order dated 5-1-2007 and the related orders and direct the taxing authorities to grant registration to the Petitioner and receive tax for the purpose of selling lottery tickets of the State of Arunachal Pradesh in the State of Kerala.