(1989) 11 MAD CK 0018

In the Madras High Court

Case No : Writ Petition No. 14596 of 1989

Rama Nava Nirman Samithi, Hyderabad — APPELLANT

Vs

State of Tamil Nadu — RESPONDENT

Date of Decision : 08-11-1989

Acts Referred:
Penal Code, 1860 (IPC) — Section 294

Citation : (1990) CriLJ 2620

Hon'ble Judges : M. Srinivasan, J

Bench : Single Bench

Advocate : R. Krishnamoorthy, for P.M. Sundaram, R. Muthukumaraswamy and K. Sundareswaran, for the Appellant;

Judgement

1. The challenge in this writ petitioner is against G.O. Ms. No. 1101 Finance (Raffles) Department, dated 6-10-1989. By the said G.O., the State

Government directed that the sale of lottery tickets of the Government of Tamil Nadu and the lotteries organised by Government of India and other

State Government shall alone be permitted within the State Tamil Nadu and the lotteries of any kind are not authorised to be sold within the State

of Tamil Nadu. The G.O. made it clear that any contravention of the order will be dealt with u/s 294-A of the Indian Penal Code.

2. The petitioner claims to have been authorised by the State of Andhra Pradesh to conduct a private lottery. He has produced the order of the

Government of Andhra Pradesh dated 4th April 1988 which permitted him to conduct lottery for a period of one year. He has also produced a

later order dated 7-3-1989 which extended the period of six months. In the later order, it is specifically mentioned that it is the last extension.

However, it is the case of the petitioner that he has obtained subsequent extension from the State of Andhra Pradesh but, in evidence of which he

has not produced any document. He has stated in paragraphs 2 of his affidavit that the authorisation granted by the State of Andhra pradesh is

valid and the same is in force. There is no express reference to any subsequent authorisation and the affidavit does not contain any details of such

alleged subsequent extension.

3. Learned counsel fro the petitioner contends that u/s 294-A of the Indian Penal Code, a State lottery and a lottery authorised by the State

Government are permissible and it is only the other lotteries which shall be punished with imprisonment prescribed in the section. Learned counsel

contends that by the impugned G.O., the effect of a Central Enactment viz. Indian Penal Code is sought to be diluted by an executive order of the

Government. According to learned counsel, when a parliamentary statute permits a particular kind of lottery being conducted, it is not open to the

State Government by passing an executive order and prevent the same by making it an offence. I do not agree with this contention. The language

of Section 294-A of the Indian Penal Code is very clear. It excludes only a State lottery and a lottery authorised by the State Government. In the

latter portion, the words ""State Government"" should necessarily mean the State within which the lottery is conducted. In this case, it is the State

Government of Tamil Nadu, Unless the lottery is authorised by the State of Tamil Nadu, it will not be exempted u/s 294-A of the Indian Penal

code, Section 294-A of the Indian Penal Code does not prescribe the procedure by which the State Government should authorise to run a lottery.

Hence, it is open to the State Government to pass executive orders for regulating the conduct of lotteries or to prevent the conducting of lotteries

within the state.

4. The second contention put forward by learned counsel is that in H. Anraj and Others Vs. State of Maharashtra, the Supreme Court has

considered the question with reference to State lotteries and held that a State Government is not entitled to prevent the sale of tickets for lotteries

held by the other State Government is not entitled to prevent the sale of tickets for lotteries held by the other State Government is not entitled to

prevent the sale of tickets for lotteries held by the other State Governments. While discussing the question, the Supreme Court observed as follows

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To continue the expose of facts in response to the request of the several State Government, the Ministry of Home Affairs. Government of India,

addressed a communication dated July 1, 1968 to the chief secretaries to the Government was opposed to the idea of lotteries being conducted by

Governments, they had decided to authorise the State Governments to conduct lotteries in view of the representations of some of the State

Government that it would help them ''to mobilise savings and to find funds for financing their development plans''. However, it was added :

At the same time, it is also felt that suitable steps should be taken to safeguard the interests of such State Governments, who, as a matter of policy,

do not desire to start State lotteries or permit sale of tickets of lotteries organised in other states, within their jurisdiction. In order to avoid

objections, from such states it has been decided that the Central Government permission for conducting State lotteries is available on the condition

that tickets to such a lottery will not be sold in another State without the express consent of the State Government concerned. I am to add that in

order to achieve this object an amendment of Section 294-A I.P.C. is being undertaken to make sale of tickets, without the consent of the State

Government concerned, a penal offence"".

We may mention here that the proposal to amend Section 294-A I.P.C. to achieve the object of preventing the sale of lottery tickets of one State

being sold in states which are apposed to the conduct of lotteries as a matter of policy has remains a static proposal and no such amendment has

so far been attempted to be made.

5. It is the contention of learned counsel that unless there is a legislation by parliament on this subject, it is not open to the State Government to

pass an executive order and prevent the other states. The Supreme Court had occasion to consider only the question of sale of tickets of other

states'' lotteries within a particular state. The Supreme Court had no occasion to consider whether a particular State Government is entitled to

prevent the sale of tickets of lotteries conducted by private persons, but authorised by other states nor was the Supreme Court concerned with the

procedure by which the State Government is entitled to authorise the sale of lottery tickets or prevent the sale of lottery tickets. Hence, the observations made by the Supreme Court in that decision have no bearing to the facts of the present case.

6. The Third contention urged by learned counsel is that the G.O. permits the sale of lottery tickets with reference to lotteries organised by the

other State Governments. According to learned counsel, when the G.O. prevents the sale of lottery tickets for private lotteries but authorised by

other State Government, it makes a discrimination in so far as it has permitted the lotteries organised by other State Government, it makes a

discrimination in so far as it has permitted the lotteries organised by other State Government but at the same time has prevented the lotteries

authorised by the other State Governments. According to learned counsel, in this country it is only in five states lotteries are conducted by the

Government themselves and they will fall within the term lotteries organised by State within the term lotteries organised by State Government. It is

stated in the affidavit in para 8-c that in all the State in this country excepting five states mentioned therein lotteries are conducted only by private

agencies as organisers. It is also stated therein that the tickets are permitted to be printed by private organisers by those State Government, but,

the State Governments would formulate the design, fix the price and affix their seals thereon. It is argued that just because the names of the

respective State Governments are found on the tickets or the seal of the Government is found on the tickets, it would not mean that those lotteries

are organised by the State Government themselves. According to learned counsel, the lotteries authorised by other State Governments themselves.

According to learned counsel the lotteries authorised by the State Governments and not organised by them have been permitted and not organised

by them have been permitted and thus a discrimination has been made. He had also produced for sample a ticket for lottery is conducted by the

Government of Arunachal Pradesh. The ticket contains the signature of Secretary, (Lotteries), Govt. of Arunachal Pradesh, Itanagar. On reverse

of the ticket, condition No. 3 is that the holder of Its prize winning tickets should produce the tickets to the secretary, Lotteries, Govt. of Arunachal

Pradesh, Itanagar. On reverse of the ticket, condition No. 3 is that the holder of Its Prize winning tickets should produce the tickets to the

secretary, lotteries, Govt. of Arunachal Pradesh, Itanagar. Condition No. 4 is that the prize of Rs. 5000/- and below can be claimed from the

Agents/Sellers/Stockists or organisers M/s. V. Kumar, Lotterywala, 5, Jain Mandir Mark behind Maharashtra Emporium, Connaught Place, New

Delhi-110001.

7. Learned counsel contends that the ticket shows that the organisers is M/s. V. Kumar, lotterywala, New Delhi and it is a private organisers and

that the ticket cannot be taken to be a ticket for a lottery organised by the State Government of Arunachal pradesh and it is only a private lottery. I

do not agree with this contention.

8. In condition No. 4 the term ''organiser'' is used with reference to a businessman in New Delhi obviously, it only means that the Arunachal

pradesh Government has appointed somebody as a sort of wholesale dealer in New Delhi. Obviously, it only means that the Arunachal pradesh

Government has appointed somebody as a sort of wholesale dealer in New Delhi in order to distribute the tickets to agents/sellers and stockists. It

does not mean that the lottery is organised by a private person and not be the State Government, On the other hand, condition No. 3 as well as the

signature of the secretary found in the ticket shows that it is a State organised lottery and not a private lottery.

9. Even assuming that in fact certain sales of tickets by agents authorised by other State Government are permitted in Tamil Nadu, such permission

will certainly be illegal and contrary to the provisions of the Government order. If any such sale is held, that will not vitiate the G.O. as such. The

Government order does not make any discrimination. The Government order is clear that the lotteries organised by the Government of India, by

the Tamil Nadu Government of India, by the Tamil Nadu Government and other State Governments are permitted. The Government order does

not permit any other lottery. Hence, if in giving effect to the Government order, the sale of tickets of private lotteries is permitted then action must

be taken by the State Government against the erring officials and also proceedings must be initiated u/s 294-A of the Indian Penal Code. Such

illegal sales will not invalidate the G.O. as such.

10. Hence, I reject all the contentions put forward by learned counsel for the petitioner. The writ petition fails and it is dismissed, No costs.

11. Petition dismissed.

