(2014) 08 GAU CK 0007

In the Gauhati High Court

Case No : WP(C) Nos. 24, 76, 90 of 2013, C.M. Appl. Nos. 101 and 107 of 2013

State of Mizoram APPELLANT

Vs

Competition Commission of India RESPONDENT

Date of Decision : 16-08-2014

Acts Referred:

Competition Act, 2002 — Section 19, 19(1), 19(1)(a), 2(1), 2(c)
Constitution of India, 1950 — Article 301, 301, 302, 303
Lotteries (Regulation) Act, 1998 — Section 2(b), 4(j)

Citation : (2015) 1 GLD 628 : (2014) 4 GLT 159

Hon'ble Judges : Lanusungkum Jamir, J

Bench : Single Bench

Advocate : Biswajit Deb, A.G. and A.K. Rokhum, Addl. A.G, Advocate for the Appellant; Anupam Sanghi, Vijay Kumar Singh, A.H. Barbhuiya, I. Choudhury, P.N. Goswami, A.K. Baruah, G.N. Sahewalla, Dijanta Das, Sr. Advs., S. Datta, Rosangzuala Ralte, Indranil Lahiri, Prasenjit Sengupta, Advocates Johny L. Tochhawng, Lalramsangzuali, Advocates, Biswajit Deb, A.G. and K. Rokhum, Addl. A.G, Advocate for the Respondent

Judgement

Lanusungkum Jamir, J.—W.P.(C) No. 24 of 2013, W.P.(C) No. 76 of 2013 and W.P.(C) No. 90 of 2013 involves the same question of facts with similar reliefs sought, these petitions are being disposed by this common judgment and order. The Government of Mizoram invited Expression of Interest (EOI) through the Director, Institutional, Finance State Lottery on 20.12.2011 for appointment of Lottery Distributors and Selling Agents for the lotteries organized by the Government of Mizoram. The Mizoram Lotteries (Regulation) Rules, 2011 was framed in terms of the Lotteries (Regulation) Act, 1998. Pursuant to the EOI of 20.12.2011, four firms/companies were selected as distributors to operate lotteries as per the provisions of the Lotteries (Regulation) Act, 1998 and the Mizoram Lotteries (Regulation) Rules, 2011. M/s. Tamarai Technologies Private Ltd. (who is the respondent No. 3 in all the 3 writ petitions) filed an information/ complaint before the Competition Commission of India under Section 19(1)(a) of the Competition Act, 2002 alleging that the Government of Mizoram (petitioners in W.P.(C) No. 24 of 2014) had violated the provisions of Section 4 of the Competition Act, 2002 and that M/s. Teesta Distributors, M/s. N.V. International (petitioner in W.P.(C) No. 76 of 2013) and M/s. Summit Online Trades Solutions Private Ltd. (petitioners in W.P.(C) No. 90 of 2013) are directly or indirectly associated with each other and have been involved in collusive bidding by quoting identical rates for Online and Paper Lotteries against EOI dated December 20, 2011 and thereby forming a cartel with regard to selection of distributors in lottery business of the State of Mizoram. On receipt of the information/complaint, the Competition Commission of India passed an order dated 7.6.2012 under Section 26(1) of the Competition Act, 2002 where it had formed an opinion that there was a prima facie case about the existence of a cartel amongst the bidders and there was contravention of the provision of Section 3(1) read with Section 3(3) of the Act and the Director General was directed to cause an investigation into the matter and to submit a report within a period of 60 (sixty) days from the receipt of the order dated 7.6.2012. In the order dated 7.6.2012, the Competition Commission of India was also of the opinion that no case was made out for violation of the provision of Section 4 of the Competition Act of 2002 (hereinafter the Act of 2002). The Director General, after completion of the investigation submitted its report before the Competition Commission of India on 17.1.2013 wherein all the allegations leveled against the 4 (four) firms/companies were found to be correct and came to a finding that they had indulged in bid rigging by forming a cartel and thereafter, came to the conclusion that there was violation of Section 3(1) read with Section 3(3) of the Competition Act of 2002. Thereafter the Competition Commission on 12.2.2013 after considering the report of the Director General, issued an order dated 12.2.2013 in case No. 24/2012 directing the respondents therein to file their reply/objection within 2 (two) weeks of receipt of the record. It further decided to hear the parties on 20.3.2013 at 10:30 AM. Being aggrieved, the aforesaid 3 (three) writ petitions have been filed.

2. Heard Mr. B. Deb, learned Advocate General, Mizoram in W.P.(C) No. 24 of 2014, Mr. I. Lahiri in W.P.(C) No. 76 of 2013 as well as Mr. S. Dutta in W.P.(C) No. 90 of 2012 for the petitioners. Also heard Mr. Vijay Kumar Singh, Deputy Director (Law) and Mr. A.H. Barbhuiya, learned CGC for the Competition Commission of India who are arrayed as respondent Nos. 1 & 2 in all the writ petitions and Mr. A.R. Malhotra, learned counsel for the respondent No. 3 Tamarai Technologies Private Ltd. (informant/complainant) in all the 3 (three) writ petitions.

3. W.P.(C) No. 24 of 2013

Mr. B. Deb, the learned Advocate General, Mizoram submits that the respondent No. 3 had not participated in the EOI invited by the petitioners nor did they raise any objection with regard to the procedure of inviting offers before the appropriate authorities and remained a silent spectator on the entire issue. The petitioners, therefore, on the basis of the offers received from the various bidders proceeded with the bidding process and decided to execute agreements with the selected bidders on the basis of the offers received in accordance with the terms and conditions as notified in the EOI dated 20.12.2011. The respondent No. 3 was at liberty to participate in the bidding process but did not do so on its own volition but have instead proceeded before the respondent No. 1 i.e., the Competition Commission of India with its complaint/information under Section 19(1) of the Act of 2002 which was registered as Complaint Case No. 24 of 2012. On the basis of the complaint made by the respondent No. 3, the respondent No. 1 had ordered an enquiry on 7.6.2012 under Section 26(1) of the Act of 2002.

While passing the order dated 7.6.2012, the respondent No. 1 had made observation stating that there seems to be a prima facie case of contravention of the provision of Section 3(1) read with Section 3(3) of the Act. The respondent No. 1 also observed that no case was made out against the petitioners as far as Section 4 of the Act is concerned. The respondent No. 1 also observed that the role of present petitioners was to regulate and monitor the business of lottery in the State of Mizoram in discharge of its power and functions as envisaged under the Lotteries (Regulation) Act and Mizoram Lotteries (Regulation) Rules, 2010 and that the petitioners cannot be considered as an enterprise or group under the Act. Therefore, there was no violation of the provisions of the Section 4 of the Act. The respondent No. 1, however, was of the opinion that there existed a prima facie case against the opposite parties 1 to 4 and the respondent No. 2 was therefore directed to cause an investigation. Basing on the order dated 7.6.2013, the respondent No. 2 caused an investigation and in its report had come to the finding that there was renegotiation of prizes of 4 (four) opposite parties before appointing all of them as its selling agents which confirms that there was tacit understanding between the Government of Mizoram/Director IF & SL and all 4 (four) parties. The DG report also came to the finding that it was a case of not only bid rigging but also a case of collusive bidding and therefore, it came to the conclusion that all 4 (four) opposite parties have colluded together and has violated the provisions of Section 3(3)(a) and 3(3)(d) of the Act.

4. Learned Advocate General, Mizoram also submits that the respondent No. 3 i.e. M/s. Tamarai Technologies Private Ltd. being a defaulter to the tune of more than Rs. 2 crores, the petitioners had filed a money suit being Money Suit No. 64 of 2012 against respondent No. 3 which is still pending before the learned trial Court. He also submits that clause 8 of the Expression of Interest provides that firms/companies, etc. or its subsidiary company having outstanding liabilities towards sale proceeds on lotteries, prizes money or any other dues shall be required to clear of such dues if selected for appointment as distributor/selling agents of Mizoram State Lotteries before signing of agreement. The respondent No. 3, therefore, having dues to the petitioners to the tune of more than Rs. 2 crores had not participated in the Expression of Interest and the complaint filed before the respondent No. 1 was just to stall the bid process with ulterior motives. When the respondent No. 1 was of the opinion that there was no violation of Section 4 of the Act of 2002 by the petitioners there was no reasons

for the respondent No. 2 to have indicated in its finding that there was bid rigging and collusion between the parties. The direction of the respondent No. 1 to the respondent No. 2 was also to cause an investigation against the opposite parties 1 to 4 and not against the present petitioners. Therefore, the respondent No. 2 had travelled beyond the reference made by the respondent No. 1, more particularly, when the respondent No. 1 had found nothing wrong on the action of the petitioners. Learned Advocate General, while referring to C.M. Appl. No. 101/2013 filed by the petitioners submits that the respondent No. 1 has also passed an order dated 11.6.2013 wherein the representative of the respondent No. 1 was authorized to make a statement before this Court that the respondent No. 1 does not intend to pass any order against the State. As the respondent No. 1 has passed the order dated 11.6.2013, it should have therefore, immediately resorted to Section 26(2) of the Act and thereafter, close the matter forthwith. This has not been done by the respondent No. 1 till date and therefore, the report of the respondent No. 2 deserves interference by this Court. In the facts and circumstances of the case, he submits that the present writ petition be allowed by quashing and setting aside the DG report submitted on 17.1.2013.

5. W.P.(C) No. 90 of 2013

Mr. S. Dutta, learned counsel appearing for the petitioners submits that in the Expression of Interest issued on 20.12.2012 by the Government of Mizoram, 4 (four) parties participated amongst which the present petitioners were also an interested party. The respondent No. 3/informant/complainant did not participate in the said Expression of Interest. The learned counsel for the petitioners submits that the present writ petition is primarily a challenge on the applicability of the Competition Act of 2002 (hereinafter the Act of 2002). He submits that the term "lottery" has been defined under Section 2(b) of the Lotteries (Regulation) Act, 1998 (hereinafter the Act of 1998). Under Section 2(b) "lottery" has been defined as a scheme for distribution of prizes by lots or draw to other persons participating in the chance or prize by purchasing tickets. Section 4(j) of the Act of 1998 provides that State may organize, conduct or promote a lottery subject to the condition that the number of bumper draws of a lottery shall not be more than 6 (six) in a calendar year. He submits that under Rule 2(c) of the Lotteries (Regulation) Rules, 2010 (hereinafter the Rules of 2010) defines distributor or selling agent to be an individual or a firm or a body corporate or other legal entity under law so appointed by the organizing State through an agreement to market and sale lotteries on behalf of the organizing State. He further submits that Rule 3 of the Rules of 2010 provides for organization of lottery by the State Government and Rule 10 provides that the organizing State shall charge a minimum amount of 5 lakhs per draw for bumper draw of lottery and for other forms of lottery a minimum amount of Rs. 10,000/- per draw. He, therefore, submits that business of lottery is being statutorily regulated wherein it is the State Government who is the organizing State and the distributors/agents are appointed by the organizing State by way of an agreement to market and sell lotteries on behalf of the organizing State. He also submits that under the Act of

1998 and the Rules of 2010, all States are to frame rules and accordingly, the Mizoram Lottery Regulation Rules, 2011 has been framed.

6. Mr. S. Dutta, learned counsel submits that the Act of 2002 was enacted by repealing the Monopolies and Restrictive Trade Practices Act, 1969 with the object for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition markets, to protect the interest of consumers to ensure freedom of trade carried on by other participants in markets. He submits that lottery is not a trade or commerce and places reliance in the cases of B.R. Enterprises Vs. State of U.P. and Others, and Khoday Distilleries Ltd. and Others Vs. State of Karnataka and Others, . He submits that lottery does not fall under the expression ''Trade'' inasmuch as it does not involve sale of goods as the lottery tickets is a mere piece of paper nor does the sale of lottery ticket have an effect of transfer of right and relies in the case of Sunrise Associates Vs. Govt. of NCT of Delhi and Others, . He submits that holding of lottery falls within the doctrine of res extra commercium and therefore, rendering of service of distribution or acting as agent of the organizing state does not fall under the ambit of the scope of service as provided under the Act of 2002. He therefore relies in the case of Union of India (UOI) and Others Vs. Martin Lottery Agencies Ltd., .

7. Mr. S. Datta also submits that the complaint made by the respondent No. 3 under Section 19(1)(a) of the Act of 2002 also alleges cartel which is defined under Section 2(c) therein. He submits that in the case in hand, the question of formation of a cartel does not arise inasmuch as all parties participating in the Expression of Interest had quoted rates as prescribed under the Rules of 2010. Further, the conclusion of the respondent No. 2 as regards identical bidding is not correct inasmuch as the 4 (four) parties that had participated in the tender had bidded for different forms of lotteries and the present petitioner i.e. Summit Online Trade Solutions Private Ltd. had bidded for Online Lottery with Rs. 10,000/- per draw. Though E-COOL Gaming Solutions and NV International Marketing have bidded for Online Lottery their bids were different than that of the petitioner and the other party i.e., Teesta Distributors had bidded for paper lottery which is totally a different product Under such circumstances, the respondent No. 2 could not have, under any circumstances, come to the finding that there was identical bidding and there was a cartel amongst the 4 (four) parties. Therefore, the finding at paragraph XVI by the respondent No. 2 is totally absurd and without any basis. In this connection, he also places reliance in the case of Union of India and others Vs. Hindustan Development Corpn. and others, .

8. He further submits that the action of the respondent No. 1 alleging violation of the Act of 2002 is without jurisdiction inasmuch as lotteries is a subject which is governed by the statutory enactments such as the Act of 1998 and the Rules of 2002. The subject matter of consideration under Case No. 24 of 2012 before the respondent No. 1 relating to marketing of lotteries is therefore beyond the

purview of the Act of 2002. Further submission is made that the Act of 2002 is a general enactment enacted for the purpose ensuring fair competition in the trade of free commodities. Therefore, the provisions of the Act of 2002 cannot be invoked in respect of a regulated commodity as the said regulated commodities is controlled and there is no freedom in marketing or purchasing of lotteries. The Act of 2002 cannot be made applicable to marketing of lotteries which operates under the stringent control of the Government.

The respondent No. 3 who had not participated in the bidding nor has demonstrated any reservation as regards the methodology adopted in publication of the Expression of Interest dated 20.12.2011, inasmuch as the respondent No. 3 does not stand anywhere in the scene of submission of bids pursuant to the EOI dated 20.12.2011. Therefore, it has no locus standi to even make a complain as the respondent No. 3 is in no way an aggrieved party. The indirect attempt on the part of the respondent No. 3 to thwart the whole process by taking recourse to respondent No. 1 is therefore, ill motivated and tainted with mala fide. He also submits that the action of respondent Nos. 1 and 2 apart from being illegal and without jurisdiction also suffers from a total non-application of mind. Further reliance has been placed in the cases of:-

(a) Somesh Tiwari Vs. Union of India (UOI) and Others, ;

(b) Secretary of the Governor of Assam vs. Madan Chandra Mahanta reported in 1997 (3) GLT 461;

(c) Dhanani Shoes Ltd. Vs. State of Assam and Others, ;

(d) Commissioner of Taxes, Assam Vs. Dhanani Shoes Ltd. and Another, and

(e) Tashi Delek Gaming Solutions Ltd. and Another Vs. State of Karnataka and Others, .

It is further submitted that the word "any person" used under Section 19 of the Act of 2002 has been defined under Section 2(1) of the said Act where it has been given a very wide scope. However, he submits that despite such a wide scope given to the term "any person", the same would have to be considered upon the context and the subject matter of the Act. In the present case, as lotteries do not come under the definition of goods, trade or service, the word "any person" would not necessarily mean "any person" involved in normal trade or providing service. Therefore, the complaint of the respondent No. 3 could not have been entertained by the respondent No. 1 and places reliance in the case of Raj Kumar Shivhare Vs. Assistant Director, Directorate of Enforcement and Another, . He, therefore, submits that under the facts and circumstances of the case, the impugned order dated 7.6.2012, the report of the respondent No. 2 dated 14.1.2013 and the order dated 12.2.2013 be set aside and quashed.

9. W.P.(C) No. 76 of 2013

Mr. I. Lahiri, the learned counsel appearing for the petitioner while adopting the submissions made by Mr. S. Datta, learned counsel appearing for the petitioner in W.P.(C) No. 90 of 2013 submits that the footing of the present petitioners are totally different inasmuch as the petitioners had a long association with the State of Mizoram in the business of lotteries. However, things fell out between the petitioner and the State of Mizoram and an arbitration proceeding was drawn out between the parties in the year 2003 being Arbitration Proceeding No. 1 of 2003. The proceedings carried on for a very long period and therefore, the parties to the said proceeding decided to amicably settle the matter and accordingly a meeting was held on 7.12.2009. The matter was finally settled in a meeting held on 22.7.2010 between the parties where the State of Mizoram accepted its liabilities of Rs. 2.89 crores and the parties agreed under the Rules of 2010 that if and when the State Government decided to reopen lottery business, the petitioners would be one amongst the successful bidders at the highest accepted bid and further that 24 lotteries shall be distributed to successful bidders including the petitioners for implementation of the negotiated settlement. It was also decided in the said meeting that the number of draws to be given to the petitioners would not be less than 25% of the total number of draws permitted by rules per day. On the basis of such agreement, the arbitration proceedings were terminated on 12.2.2011.

This being the position, the petitioners were formally assured for a minimum of 25% of the draws to be held per day by the State of Mizoram. The State of Mizoram initiated a fresh Expression of Interest on 9.3.2011. However, the same did not materialize due to various litigations and finally the Expression of Interest was made on 20.12.2011. The petitioners, being a natural choice, pursuant to the agreement made on 22.7.2010, participated in the said bid process and was automatically awarded 25% of the draws to be held per day. Mr. I. Lahiri, the learned counsel for the petitioner, therefore, submits that in the background of the history between the petitioner and the State of Mizoram, the question of having a cartel or bid rigging does not arise under any circumstances more particularly, when the agreement dated 22.7.2010 existed. He also submits that the respondent No. 3 had never participated in the Expression of Interest nor raised any objections for the working modalities of the same. However, it had proceeded with the complaint before the respondent No. 1. The same would show that the said complaint was actuated with malice. As the respondent No. 3 had not participated in the Expression of Interest, it has no locus standi to even make the complaint before the respondent No. 1. Therefore, the allegations against the petitioners is without any merit, as the petitioners are assured of a contract of 25% of the draws at the rate quoted by the highest bidder and therefore, any rates quoted by the petitioner would have no relevance. The respondent No. 2 had also lost sight of the fact that the petitioners had ceased to have any business in lotteries and its participation in the tender was only to recover the dues from the State of Mizoram. In the facts and circumstances, he also submits that the impugned report of the respondent No. 2 dated 17.1.2013 and the proceedings being Case No. 24 of 2013 before the respondent No. 1 be set aside and quashed.

10. Countering the aforesaid 3 (three) writ petitions, Mr. Vijay Kumar Singh, Deputy Director (Law), appearing for the Competition Commission of India/ respondent No. 1 as well as Mr. A.H. Barbhuiya, learned CGC for the respondent No. 1 appearing for respondent No. 1 in the later stage submits that the respondent No. 1 received information from M/s. Tamarai Technologies Private Ltd. under Section 19(1)(a) of the Act of 2002 on 16.5.2012, which was registered as Case No. 24 of 2012. The information pertained to alleged anti-competitive behavior by certain opposite parties in the matter of Expression of Interest floated by the Government of Mizoram on 20.12.2011 for appointment of lottery distributors and selling agents for the lotteries organized by the Government of Mizoram. On 7.6.2012, the respondent No. 1 came to a prima facie opinion that there was a cartel amongst the opposite parties 1 to 4 in quoting the same rates for the Expression of Interest floated by the opposite Party No. 5 (Government of Mizoram) which was in contravention of the Section 3 of the Act of 2002. Accordingly, a direction was given to the respondent No. 2 to conduct investigation and submit its report. The respondent No. 1 while issuing the direction for investigation to the respondent No. 2 also observed that no prima facie case for abuse of dominant possession under Section 4 of the Act of 2002 was made out against the State of Mizoram. It is submitted that there are no adverse civil consequences against any party flowing from the said order and the subsequent report of the respondent No. 2 until the respondent No. 1 decides the matter finally and therefore, the 3(three) writ petitions are not maintainable and places his reliance in the case of Competition Commission of India Vs. Steel Authority of India Ltd. and Another, . He also submits that there is no judicial review against any tentative decisions or inter departmental communications which at best constitutes a step in the process of taking a final decision and relies in the case of State of Orissa and Others Vs. Mesco Steels Ltd. and Another, .

It is further submitted that the present writ petitions should not be entertained by this Court as the same are not maintainable inasmuch as it is only in the stage of show cause notice without any final adjudication. Reliance has been placed in the case of Executive Engineer, Bihar State Housing Board Vs. Ramesh Kumar Singh and others, and in the case of Kingfisher Airline Limited vs. Competition Commission of India passed by the Bombay High Court by judgment dated 31.3.2010 and also the judgment dated 4.2.2013 passed by the Allahabad High Court in the case of Narmata Marketing Private Ltd. vs. CCI & Ors. It is submitted that the petitioners have alternative remedy under Section 53(B) of the Act of 2002. Therefore, when there is alternative remedy available to the petitioners, the present writ petitions are not maintainable except on the ground of jurisdiction, which is very limited, and which have also not been taken as a ground by the petitioners. Therefore, there is no merit in the present writ petitions and the same should not be entertained by this Court.

11. It is also submitted that the Commission initiates a case on the basis of information received under the Act of 2002. If the respondent No. 1 is of the opinion that there is a prima facie case, it refers the case to the respondent No. 2 for investigating into the matter under Section 26(1) of the Act of 2002. In the event, no prima facie case is found by the respondent No. 1, it closes the case under Section 26(2) of the Act of 2002. However, when reference is made to respondent No. 2 for investigation, after receipt of the report from the respondent No. 2, the report is considered and thereafter parties are heard for passing final orders. As the present writ petition has been filed at the stage when the respondent No. 2 has just submitted its report, the respondent No. 1 is yet to hear the parties and take a decision and therefore, the parties instead of approaching this Court should place their case before the respondent No. 1. Reliance has been placed in the order dated 12.5.2011 passed by the Competition Commission of India in Case No. 15 of 2010 in the case of Jupiter Gaming Solutions Private Limited vs. Government of Goa & Another.

12. Further submission has been made that the Mizoram Lotteries (Regulation) Rules, 2011 and the Competition Act of 2002 are not in conflict inasmuch as the said Rules of 2011 are meant for regulating the lottery sector whereas the Act of 2002 has been enacted to prevent practices having adverse effect on competition. In the present case, the respondent No. 1 is not examining the vires of the Expression of Interest under the Lottery Regulation but is investigating into the alleged bid rigging activity which amounts to violation of Section 3(3)(d) of the Act of 2002. Reference has also been made to Sections 60, 61 and 62 of the Act of 2002 and reliance placed in the decision of the Bombay High Court in the case of Amir Khan Productions Private Ltd. vs. Union of India. The allegation made by the petitioners that the respondent has engaged in a roving enquiry and is harassing them is denied and such allegations are not maintainable as has been held in the case of Amir Khan (supra). It is also submitted that the respondent No. 2 had completed its investigation within time after having being given extension of time on 28.8.2012, 23.10.2012 and 13.12.2012 by the respondent No. 1 which is permissible under the Act of 2002. The observation of the respondent No. 1 under Section 26(1) was merely a prima facie view as regards Section 4 of the Act of 2002 as regards the State of Mizoram in its capacity of regulating the lottery trade. Therefore, the respondent No. 1 has passed an order dated 11.6.2003 expressing its intention not to pass an order against the State of Mizoram. As such, no further grievance survives in so far as the W.P.(C) No. 24 of 2013 i.e. writ petition filed by the State of Mizoram is concerned. The main purpose of filing the writ petitions is to delay and defeat the enquiry initiated against the alleged anticompetitive practices in the present case.

13. Mr. A.R. Malhotra, learned counsel appearing for the respondent No. 3 submits that the petitioners have not come with clean hands before this Court as they have failed to disclose the complete and correct facts that are relevant for deciding the present case in hand. He submits that the respondent No. 3 was appointed as a Selling Agent for the Mizoram State Lottery by an agreement

dated 28.11.2008 between the Government of Mizoram and the respondent No. 3. In September, 2009, the Government of Mizoram unilaterally decided to modify the terms of the agreement which was challenged by the respondent No. 3 in W.P.(C) No. 10 of 2010. This Court, after being satisfied, had issued an interim order dated 20.6.2010 which was subsequently made absolute till disposal of the writ petition by order dated 2.3.2010. The State of Mizoram with mala fide intention had therefore issued a Notification dated 18.3.2010 imposing a ban on organization, conduct, promote and sale of lottery tickets within the State of Mizoram. Thereafter, without even withdrawing the said Notification dated 18.3.2010 by which there was a ban on lottery in the State of Mizoram, the Government of Mizoram had floated NTT for appointment of Selling Agent/ Distributors on 13.12.2010. In response to the said NIT dated 9.3.2011, several parties submitted their tenders. However, the State of Mizoram realize its mistake and therefore the Notification dated 3.1.2011 was issued withdrawing the earlier Notification dated 18.3.2010. The NIT dated 13.12.2010 was accordingly abandoned and a fresh NIT was issued on 9.3.2011. Subsequently, another NIT was floated on 20.12.2011 wherein only 4 (four) tenderers submitted their tenders wherein all the 4 (four) tenderers quoted unreasonably low rates and there was a clear unanimity in the pattern of the rates quoted by them. The respondent No. 3 in their counter-affidavit has shown the rates quoted by the 4 (four) tenderers as under:-

14. Mr. A.R. Malhotra, learned counsel appearing for the respondent No. 3 submits that on a bare perusal of the rates quoted by the 4 (four) tenderers what emerges is that the statutory mandate of anti-corruption law have been floated and as the respondent No. 3 being actively involved in the business of lottery had submitted a complaint before the respondent No. 1 under Section 19 of the Act of 2002 and a copy of the same was also forwarded to the Government of Mizoram. It was on the basis of the complaint that the respondent No. 2 was directed to cause an enquiry who accordingly submitted its report on 17.1.2013. The investigation report was sent to the parties for enabling them to file replies/ objections wherein the opposite parties were also directed to file their profit and loss account, balance sheets and turnover for the 3 (three) financial years.

15. Mr. A.R. Malhotra, learned counsel appearing for the respondent No. 3 also raised preliminary objections stating that W.P.(C) No. 24 of 2013 was filed through the Secretary to the Government of Mizoram, Finance Department and the Director, Institutional, Finance and State Lottery, Mizoram, Aizawl as petitioners 1 and 2. However, no authorization has been given by the petitioner No. 2 in the affidavit by affirming the affidavits signed by the petitioner No. 1 and therefore the writ petition is not maintainable.

16. I have heard the learned counsel appearing for the parties.

17. The respondents No. 1 and 2 in all the writ petitions has confined the arguments to the stage of show cause notice and has not entered into the merit of the case. The petitioners in W.P.(C) No. 76/2013 have also raised the issue of

the applicability of the Act of 2002. This Court therefore intends to first consider the issue of applicability of the Act and whether the respondent No. 1 could have entertained the complaint/information given by the respondent No. 3.

18. The Act of 2002 aims to prevent practices having adverse effect on competition to promote and sustain competition in market. It also aims to protect the interest of the consumer and to ensure freedom of trade carried on by the participants in the market.

The first issue is whether lotteries can be considered as a trade under the Act of 2002. Under the Lotteries Regulation Act of 1998, lottery has been defined as a scheme for distribution of prizes by lots or chance to those persons participating in the chances of a prize by purchasing tickets. Unlike any other trade and commerce, the business of lottery is being governed strictly in terms of the Act of 1998 and the Regulations and Rules framed thereunder.

19. In the case of B.R. Enterprises (Supra), the Hon''ble Supreme Court has laid the ratio that the difference between gambling and trade is that gambling inherently contains a chance with no skill, while trade contains skill with no chance and even in the State Lotteries the same element of chance remains with no skill and therefore it remains within the realm of gambling and the same would not be a trade in any case, would not qualify to be ''trade and commerce'' as used in Article 301.

Further, the Hon''ble Supreme Court was of the opinion that no gambling could be commercium and therefore the principle laid down in the case of The State of Bombay Vs. R.M.D. Chamarbaugwala, would equally be applicable to the State organized lottery.

It was therefore held that Lotteries organized by the State is also gambling in nature and cannot be construed to be a trade and commerce within the meaning of Article 301 to 303 of the Constitution of India.

20. Further, in the case of Sunrise Associates (Supra), the Hon''ble Supreme Court has held that a lottery ticket has no value in itself. The sale of lottery ticket does not necessarily involve the sale of goods and on purchasing a lottery ticket, the purchaser would have a right to claim to a conditional interest in the prize money which is not in the purchaser''s possession. The right would fall squarely within the definition of an actionable claim and would therefore be excluded from the definition of ''goods'' under the Sale of Goods Act and the sales tax statutes.

21. In the case of Martin Lottery Agencies Ltd. (supra), the Hon''ble Supreme Court has held that the law, as it stands today recognizes lottery to be gambling. Thus, holding of lottery being gambling, comes within the purview of the doctrine of res extra commercium. Organizing lottery by the State is tolerated being an economic activity on its part so as to enable it to raise revenue and that raising of revenue by the State, by itself cannot amount to rendition of any service.

22. Under the Act of 2002, ''goods'' has been defined as goods defined in the

sale of Goods Act, 1930 (8 of 1930) and includes-(A) products manufactured, processed or mined; (B) debentures, stocks and shares after allotment; (C) in relation to goods supplied, distributed or controlled in India, goods imported into India.

''Service'' has been defined as service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial matters such as banking, communication, education, financing, insurance, chits fund, real estate, transport, storage, material treatment, processing, supply of electrical and other energy, boarding, lodging, entertainment, amusement, construction, repair, conveying of news or information and advertising.

''Trade'' has also been defined as any trade, business, industry, profession or occupation relating to the production, supply, distribution, storage or control of goods and includes the provision of any service.

23. Considering the Act of 2002, this Court is of the considered opinion that the same would be applicable to legitimate trade and goods to ensure competition in the market, to protect the interest of the consumers and freedom of trade in markets which are res commercium. The lottery business being gambling and falling within the purview of the doctrine of res extra commercium and not qualifying in the normal parlance of trade and commerce would therefore not come within the purview of the Act of 2002. This being the position, the respondent No. 1 having no jurisdiction could not have entertained the information/complaint of the respondent No. 3. Accordingly the Order dated 7.6.2012 passed by the respondent No. 1 directing the respondent No. 2 to cause an investigation is held to be illegal.

24. Coming to W.P.(C) No. 24/2013, this Court has already noticed that in the order dated 7.6.2012 passed by the respondent No. 1, it was found that there was no contravention of Section 4 of the Act of 2002 in so far as the State of Mizoram is concerned. Further, in C.M. Application No. 101/2013, this Court has noticed the order dated 11.6.2013 passed by the respondent No. 1 wherein the representative was authorized to make a statement that the respondent No. 1 does not intend to pass any order against the State and to pray for lifting injunction order. If that be the position, the respondent No. 1 ought to have closed the case against the petitioners in W.P.(C) No. 26/2013 under Section 26 of the Act. This has not been done in the present case. Accordingly, this Court is of the considered opinion that no further proceedings can be allowed against the petitioners in W.P.(C) No. 26/2013 by the respondent No. 1.

25. As regards the contention of the respondents No. 1 and 2 that the three writ petitions are not maintainable inasmuch the petitioners have approached this Court in the stage of show cause notice, this Court is of the considered opinion that having already held that the lottery business does not fall within the purview of the Competition Act of 2002 and therefore the respondent No. 1 has no

jurisdiction, the contention of the respondent Nos. 1 and 2 is rejected.

26. In the fact and circumstances of the case, this Court does not intend to discuss any further the arguments forwarded by the petitioners in W.P.(C) Nos. 76/2013 and 90/2013 in so far as the merit of the case is concerned. In view of what has been discussed herein above, the Orders dated 7.6.2012 and 12.2.2013 passed by the respondent No. 1 and the Investigation Report of the respondent No. 2 are set aside and quashed. Accordingly, all the three writ petitions are allowed. No costs.