

(2001) 08 GAU CK 0028

In the Gauhati High Court

Case No : Misc. Case No's. 784 and 785 of 2001 in Writ Petition (C) No's. 3510 and 3511 of 2001

State of Punjab

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision : 29-08-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20
Constitution of India, 1950 — Article 226(2)
Lotteries (Regulation) Act, 1998 — Section 4

Citation : AIR 2002 Guw 33 : (2001) 2 GLT 545

Hon'ble Judges : A.H. Saikia, J

Bench : Single Bench

Advocate : A. Chopra, A.C. Barbora, R. Barobora, A.K. Goswami and D. Ketan, for the Appellant; P.K. Goswami, N. Dutta, A. Soni, M. Dutta, S. Sarma, A.N. Choudhury, R. Islam and J. Deka, for the Respondent

Judgement

1. Both these Miscellaneous applications I.e. Misc. Case No. 784/2001 and 785/2001 have been filed by the applicant. State of Punjab, represented by the Jt. Secretary Govt. of Punjab (Finance-cum-Lotteries) Directorate of Lotteries, Chandigarh, Punjab seeking vacation/cancellation and/or modification of the order dated 19.5.2001 passed by this Court in W.P.C. Nos. 3511/2001 and 3510/2001 respectively wherein the present applicant State of Punjab has been arrayed as respondent No. 3.

2. Since common Issue is involved, both the Miscellaneous applications have been taken up together for consideration. For the purpose of adjudication of the present proceedings I would like to refer mainly to Misc. Case No. 785/2001 arising out of W.P.C. No. 3510.2001 as the lead case.

3. I have heard Mr. A. Chopra and Mr. A.C. Borbora, the learned counsel appearing on behalf of the applicant and also heard the learned senior counsel Mr. P.K. Goswami, assisted by Mr. S. Sarma, learned counsel and Mr. A. Soni, the

learned counsel appearing on behalf of the writ petitioners (respondents in these Misc. cases).

4. The common Issue Involved in both the writ petitions is relating to the validity and legality of a Circular dated 26.5.1999 issued by the joint Secretary, Finance-Cum-Director, Punjab State Lotteries for Principal Secretary to Govt. Pb., Department of Finance addressed to the Chief Secretaries of all the State Govts. by which the States, running lotteries, are directed to satisfy the Director, Punjab State Lotteries that the provisions of the Lotteries (Regulation) Act, 1998, particularly Section 4 are being complied with before the lottery tickets are sold in the State of Punjab. in the writ petition the following reliefs have been prayed for:-

"(a) Issue a writ in the nature of Certiorari and/or any other appropriate writ, order or direction of like nature setting aside and quashing the impugned circular/ Letter No.PSL:FD:LE:2/ 99/408 dated 26.5.1999 (Annexure-1) issued by the Joint Secretary, Finance-cum-Director, Punjab State Lotteries for Principal Secretary to the Govt. of Punjab, Department of Finance, Chandigarh (respondent No. 3).

(b) Issue a writ in the nature of Mandamus and/or any other appropriate Writ, Order or Direction of like nature directing the respondent Nos. 3 and 4 to cancel, rescind and/or otherwise forbear from giving effect to the Impugned Circular/ Letter dated 26.5.1999 (Annexure-1);

(c) Issue a writ in the nature of Mandamus and/or any other appropriate Writ, Order or Direction of like nature declaring that if a State sells its Lotteries within and outside its territories then it cannot ban the lotteries of other States to be sold within its territory by virtue of power conferred u/s 5 of the Lotteries (Regulation) Act, 1998;

(d) issue a writ in the nature of Mandamus and/or any other appropriate writ, order or direction of like nature declaring that it is the Central Govt. alone u/s 6 of the Lotteries (Regulation) Act, 1998 to scrutinise, assess and adjudicate regarding as to whether the Lottery of a particular State is or is not in conformity with the provisions of Sections 4 and 5 of the Act, 1998 and the State Government have no power and/ or authority in this respect;

(e) issue a writ in the nature of Mandamus and/or any other appropriate Writ, Order or Direction of like nature declaring that the Circular/Letter dated 26.5.1999 issued by the respondent no.3 (Annexure-1) has been issued in violation of Section 6 of the Lotteries (Regulation) Act, 1998;

(f) issue a writ in the nature of Mandamus and/or any other appropriate writ, order or direction of like nature directing the Director General of Police Punjab i.e. the respendent No. 4, its official etc. not to restrain in nay manner and create any hindrance in the sale of lottery tickets of the lotteries organised and run by the State of Arunachal Pradesh within the territory of the State of Punjab;

(g) and upon cause or causes that may be shown and after hearing the parties as well as perusal of the records be pleased to make the Rule absolute and/or pass such other further order or orders as to your Lordships may deem fit and proper in the interest of Justice.

AND

In the interim, pending the hearing and final disposal of the petition, your Lordships would be pleased to stay the impugned Circular/Letter dated 26.5.1999 (Annexure-1) issued by the respondent No. 3 State with a further direction to the respondent Nos. 3 and 4 not to prohibit and/or restrain the sale of lottery tickets of Arunachal Pradesh State Lotteries by the petitioners within the territory of the State of Punjab in the interest of justice and/or pass such other further order or orders as to your Lordships may deem fit and proper for the end of justice."

4.(a) This Court on 19.5.2001 while Issuing a Rule, making it returnable within three months with a direction to take steps for service of notice upon respondent Nos. 3 and 4 (i.e. State of Punjab, represented by the joint Secretary to the Govt. of Punjab, (Finance-cum-Lotteries), Directorate of Lotteries, Chandigarh, Punjab and the Director of police. State of Punjab, Chandigarh, Punjab respectively) within 3(three) days, granted the following in term relief ex-parte which has been sought to be vacated/modified/cancelled by this present Misc. application:

"Be that as it may, at this stage, the petitioners could make out a prima-facie case for an appropriate ad-interim order keeping in view of all these existing facts and circumstances and provisions of law as enumerated above and, accordingly, I may the following interim order.

The impugned letter/notification dated 26.5.1999 bearing No. PSL/ FD:LR: 2/99/408 issued by the Joint Secretary, Finance-cum-Director, Punjab, State Lottery for Principal Secy, to Govt. of Pb., Department of Finance as in Annexure-1 to the writ petition shall not be given effect to in respect of the petitioners viz.. State of Arunachal and Its authorised distributors or agents for organisation of lotteries of the State concerned and further. it is made clear that the respondents, particularly, the respondent Nos. 3 & 4 shall not prohibit or restrict the sale of lotteries of the Arunachal Pradesh State Lottery by the petitioners and its distributors/agents within the territory of Punjab and also not to interfere with the petitioners in the matter to secure the ends of justice until further orders of this Court."

5. Before I take up to discuss and consider the rival contentions made on behalf of the parties, it would be proper and appropriate to look at the Impugned circular dated 26.5.1999 being the bone of contention in the writ petition. The circular reads, thus:-

"No.PSL:FD:LE:2/99/408

GOVERNMENT OF PUNJAB

Department of Finance

Directorate of Lotteries

(Administration Branch)

To

The Chief secretaries of all the State Govts.

Dated, Chandigarh the 26.5.1999.

Sub: Sale of lottery tickets of other State Lotteries in the State of Punjab.

Sir,

I am directed to address you on the subject noted above and to say that the vires of the provisions of Lotteries (Regulation) Act, 1998 had been challenged in the Hon''ble Supreme Court of India in the case of B.R. Enterprises v. State of U.P. The Hon''ble Supreme Court of India in terms of its order dated 7.5.1999 has upheld the validity of the Lotteries (Regulation) Act, 1998.

The Hon''ble Supreme Court of India also observed that on a plain reading of Section 5 of the Lotteries (Regulation) Act, 1998, the State Government is empowered within its State to prohibit the sale of tickets of lotteries organised by every other State. However, this would mean that the State could only exercise such discretion if it decides not to have any lottery within its territory including its own lottery,

Some persons representing themselves to be conducting lotteries organised by the other States are wanting to sell the lottery tickets in the State of Punjab in view of the said observations.

This aspect was referred to the Law Department which has opined that when a State Government is running its own lotteries, it cannot ban the lotteries run by the other States but the State Government must ensure that the other State Government, comply with the conditions of Sections 4 and 12 of the Lotteries (Regulation) Act, 1998. A particular State is to examine whether or not the other State Lottery is fulfilling the various provisions/ characteristics as enshrined u/s 4 of the Lotteries (Regulation) Act, 1998.

The concept of "lottery" organised by a State requires certain basic and essential concomitants to be satisfied as, indeed, members of the public when Investing their money in such a lottery proceed on a Trust and on certain assumptions as to the genuineness, bona fides, safety, security rectitude of Administration etc. associated with the Government functioning.

Therefore, with a view to ensure that other State Lotteries conform to the provisions of the Lotteries (Regulation) Act, 1998, particularly section 4 it has

been decided that only lotteries organised by other State Government in conformity with Section 4 of the Act can sell their lottery tickets in the State of Punjab.

For the purpose of ensuring compliance with the provisions of the Lotteries (Regulation) act, your State Lotteries must satisfy the Director, Punjab State Lotteries that the provisions of the Lotteries (Regulations) Act, 1998, particularly Section 4, is being complied with, before the lottery tickets in the State of Punjab.

The receipt of this letter may kindly be acknowledged.

Yours faithfully. Joint Secretary Finance- cum-Director, Pb. State Lotteries for Principal Secy to Govt. Pb. Department of Finance
Endst.No.PSL:FD:LE:2;99/409 dated 26.5.1999.)

6. A plain reading of the aforesaid Circular indicates that all the States are informed to satisfy the Director, Punjab State Lotteries, before lottery tickets of the State, running its own Lottery, are sold in the State of Punjab, whether provisions of Lotteries (Regulations) Act, 1998 (for short "the Act") particularly Section 4 of the said Act are being complied with. It clearly appears that the Circular issued by the State of Punjab is for the information to all the States that are intending to run their lotteries in the State of Punjab which itself is running a Lottery of its own. As per circular, after upholding the validity of the Act by the Supreme Court by its order dated 7.5.1999 in the case of B.R. Enterprises v. State of U.P. and in terms of the opinion of the Law Department to the effect that when a State Govt. is running its own lottery it cannot ban the lottery run by other States, the State must ensure that the other State Governments have complied with the conditions of Sections 4 and 12 of the Act and accordingly a particular State is to examine whether or not the other State Lotteries are fulfilling the various provisions/characteristics as enshrined u/s 4 of the Act. With a view to ensure that the other State Lotteries conform to the provisions of the Act particularly Section 4 of the Act, the Govt. of Punjab, decided that only the lotteries organised by the other State Govt. in conformity with Section 4 of the Act can sell their lottery tickets in the State of Punjab and for which those State Lotteries must satisfy the Director of Punjab State Lotteries as regards the compliance of the statutory provisions noted above before selling lottery tickets in its State.

7. Mr. Chopra, learned counsel appearing on behalf of the applicant/ respondent No. 3 forcefully contends that the ex-parte in term order dated 19.5.2001 deserves vacation/modification and/or cancellation mainly on the grounds i.e. for (i) lack of territorial jurisdiction, (ii) suppression of material facts, (iii) not approaching this Court with clean hand and (iv) delay and laches in filing the writ petition. The learned counsel for the applicants states that the interim order in question was passed ex-parte without issuing notice to the respondent Nos. 3 and 4 prior to granting such interim relief to the writ petitioners. Advancing his argument on the lack of territorial jurisdiction the learned counsel argues that

the impugned circular dated 26.5.1999 was issued by the respondent No. 3 to the Chief Secretaries of all State Governments only asking them to satisfy the Director, Punjab Lotteries that the provisions of the Act particularly Section 4 are being complied with before their lottery tickets are sold in the State of Punjab. Since this circular has simply been addressed to Chief Secretaries of all the States issued on behalf of State of Punjab, falling within the Jurisdiction of the Punjab and Haryana High Court, for aforesaid compliance, the cause of action neither wholly nor in part arises within the territorial limit of this Court. Mere issuance of a circular, by which the writ petitioners, falling within the jurisdiction of this Court, claimed to be effected, cannot invest jurisdiction to this Court to entertain the present writ petition, and as such before giving no other grounds, on the count of want of territorial jurisdiction alone, the ex-parte interim order is liable to be vacated.

8. As regards suppression of material facts, Mr. Chopra urges that the writ petitioner has obtained the present interim order by not disclosing this Court certain communications made between the Chief Ministers of Arunachal Pradesh and Punjab relating to selling of tickets of Arunachal Pradesh State Lotteries in the State of Punjab. In support of his argument he has taken me through two DO letters made available at Annexures-2 and 3 in this Misc. application and certain other communications made at the Secretary level between these two Governments made available at Annexures-4 and 5 to this Misc. application. It is seen that vide DO letter dated 15.7.2000 the present Chief Minister of Arunachal Pradesh wrote to his Punjab counterpart requesting him to grant permission to sell Arunachal Pradesh State Lottery tickets in the State of Punjab, in reply to which the Chief Minister of Punjab by his DO letter dated 13.9.2000 requested his Arunachal Pradesh counterpart to direct the officers connected with Lotteries in Arunachal Pradesh to send details of the Lotteries and other related documents to the Director, Punjab State Lotteries, Chandigarh to enable the Punjab Government whether those lotteries conform to the provisions of Act and the guidelines laid by the Hon'ble Supreme Court on its various judgment on the subject enclosing a copy of the impugned circular dated 26.5.1999. Immediately after such correspondences, on 19.1.2001 (Annexure-4 of this Misc. application) the Secretary (State Lotteries) Government of Arunachal Pradesh, Itanagar, furnished certain documentary proof in respect of Arunachal Pradesh State Lotteries to the Joint Secretary (Finance)-cum-Director of Punjab State Lotteries, Govt. of Punjab, Department of Finance who in turn by his communication dated 16.3.2001 (Annexure-5 to this Misc. application) wrote to the Under Secretary (State Lotteries), Govt. of Arunachal Pradesh, Ministry of Finance requesting him to supply information and documents on the point as narrated in the said communications itself. Without replying/furnishing any information as directed vide letter dated 16.3.2001, Mr. Chopra submits, the writ petitioner approached this Court for a writ of Mandamus suppressing all those aforesaid material facts. More importantly the writ petitioners have, without challenging the Punjab State Lotteries (1st amendment) Rules 1999 (for short "Rules") amending the Punjab

State Lotteries Rule 1998 which has been made operative effect from 23.7.1999 by notification of the Official Gazette., more particularly the Rule 6(A) of the Rules enforcing immediately after the impugned circular dated 26.5.1999, challenged the legality and validity of the impugned circular dated 26.5.1999 and such action would manifestly reflect that the writ petitioners, being absolutely aware of the said provisions of law, intentionally have chosen to challenge the Circular without any whisper of existence of such rules. For this reason also the petitioners are not entitled to any relief whatsoever not to speak of any such interim relief that too ex-parte. Further he contends that the writ petitioners have not approached this Court with a clean hand and on the face of the writ petition itself, it can be candidly said that there is no bona fide on the part of the writ petitioners in approaching this Court - firstly, the writ petitioners invoked the jurisdiction of this Court when the issue involved does not fall within the territorial jurisdiction of this Court and secondly, but most peculiarly, this writ petition is not an application on behalf of the State of Arunachal Pradesh but purely and wholly has been filed by private parties i.e. petitioner Nos. 2 and 3 who claimed to be working as Distributors of the lottery organised by the petitioner No. 1 i.e. the State of Arunachal Pradesh by dint of an agreement executed on 10.10.1997 between the petitioner No. 1 and the petitioner No. 2, as transpired from paragraph 1 of the writ petition. In support of his submission, he has drawn the attention of this Court to the affidavit appended to the writ petition, being sworn by the petitioner No. 3 only on behalf of the petitioner No. 2 and not on behalf of the petitioner No. 1. He further submits that the said defect which is apparent on the face of the record cannot be rectified by subsequent additional affidavit filed on 20.7.2001, by the Secretary (State Lottery of Arunachal Pradesh) during the course of hearing of this Misc. application. In view of the same, the entire action on the part of the writ petitioners smacks of doubt regarding bonafide on their part.

9. Referring to delay and laches in filing the writ petition, it is contended that the writ petition warrants dismissal in limine due to delay in approaching this Court because the writ petitioners have approached this Court on 19.8.2001 almost after two years of the issuance of the impugned Circular dated 26.5.1999 without any proper and sufficient explanation of such delay. The only averments made in paragraphs 26 of the writ petition that the petitioners are approaching this Hon'ble High Court at the earliest and there is no delay in filing the writ petition, cannot be accepted as proper explanation of such delay in seeking the equitable relief. In addition to the above aforesaid arguments. Mr. Chopra, further states that the petitioners have made no effort to demand justice against the impugned Circular dated 26.5.1999. That being seemingly evident from the writ petition itself which contains no proof of demanding justice and denial of the same save and except the impugned Circular and the Act marked as Annexure-1 and 2 to the writ petition. Hence there being no denial on the part of the applicant/respondent No. 2, the petitioners are not entitled to for issuance of any writ of mandamus from this Court and, as such, in view of the same, the ex-parte

interim order dated 19.5.2001 is liable to be cancelled/vacated immediately. in support of those submissions, learned counsel for the applicant has relied on the decisions of various High Courts as well as Supreme Court. The reliance has been made mainly on the following rulings:

- (i) Jiwan Das Sethi v. State of Punjab, (P&H) (DB) reported in 1999(3) SST 115;
- (ii) The Government of Manipur v. Punjab State etc. (P&H) (DB)(CWP 10155 of 1995 disposed of on 10.7.1996).
- (iii) Rajib Puri v. State of H.P.(HP)fDB) CWP No.410/98 & 482/98 disposed of on 21.9.1988.
- (iv) Century Teletronics and others v. State of West Bengal & Others (Calcutta) AST No.349/2000, WP No.3518(W)/2000 decided on 23.2.2000.
- (v) Amrit Lal Berry and Another Vs. Collector of Central Excise, New Delhi and Others,
- (vi) Saraswati Industrial Syndicate Ltd. and Others Vs. Union of India (UOI), and
- (vii) State of Rajasthan and Others Vs. Swaika Properties and Another,

10. Defending the passing of interim order in question, Mr. Goswami, learned Senior counsel appearing for the writ petitioners/ respondents in Misc. Case No. 785/2001 arising out of W.P.(C) No. 3510/2001 has straight way taken me through the relevant provisions of the Act particularly Sections 4, 5 and 6 and has questioned the power and jurisdiction of the respondent No. 3 in issuing the impugned circular dated 26.5.1999. it is contended that the Section 4 of the Act does not empower the State of Punjab to make any sort of scrutiny whatsoever before selling of lottery tickets by the other States in the State of Punjab. Any action to be taken as regards such scrutiny, etc., has been vested only on the Central Government in terms of Section 6 of the Act. Referring to a latest decision of Apex Court dealing with the act, in B.R. Enterprises Vs. State of U.P. and Others, learned senior counsel argues that the law has already been settled that it is only the State that decides as a public policy for public interest to make the State a lottery free zone, can prohibit the sale of lottery tickets in that States but if the said State runs the lottery of its own, the sale of lottery tickets of other States in that State cannot be prohibited and any question relating to prohibition of running lottery or selling of the lottery tickets in a State not having lottery free zone including non-compliance of the provisions of the Act particularly Section 4, can only be entertained by the Central Govt. in the instant case, by Circular dated 26.5.1999 the Government of Punjab which is running its own lottery, directed the other States which are willing to sell lottery tickets in the State of Punjab, to satisfy the director of Punjab State Lottery relating to compliance of Section 4 of the Act before selling any lottery tickets therein and the said action on the part of the respondent No.3, in the light of the provisions of the Act as well as B.R. Enterprise's case (supra), is brazenly illegal, without jurisdiction and not tenable under the law. Accordingly, in passing of the interim order the

petitioners constitutional rights have been protected and as such the interim order is absolutely correct and justified which does not warrant any interference and hence, this Miscellaneous case is liable to be dismissed.

11. Debunking the applicant's claim of lack of territorial jurisdiction, Mr. Goswami, learned Sr. counsel vehemently urges that by issuance of the impugned Circular which is very much in the guise of banning lotteries in the State of Punjab contrary to the provisions of law and judicial pronouncement, the fundamental rights of the writ petitioners, having situated within the territorial limits of this High Court, to carry on their business of lottery in the State of Punjab have been infringed and the very fact of such banning to sale lottery tickets itself has given rise to cause of action to invoke the jurisdiction of this Court. It is further submitted that the power of the High Court to exercise its jurisdiction has already been widened under Article 226(2) of the Constitution on being amended. Mr. Goswami buttresses his submission by referring to a ruling of Apex Court reported in (2000) 7 SCC-640 (Navinchandra N Majithia v. State of Maharashtra and others) and submits that applying the ratio of Navinchandra's case (supra) this Court has territorial jurisdiction to entertain the present writ petition.

12. After giving my thoughtful consideration to the submissions of the learned counsel of the parties and on the pleadings of the parties, I feel that in order to decide the moot issue whether the ex parte interim requires vacation/cancellation or not, this Court is to see whether the three settled principles of law accepted as condition precedent for consideration of granting interim relief i.e. prima-facie case, balance of convenience, irreparable loss and injury have been satisfied in the case in hand. In order to examine whether there is a prima-facie case in favour of the writ petitioners I would like to confine myself to the objection of the applicant that this court has no territorial Jurisdiction to entertain this writ petition in its present form.

13. Factual situation in the instant case is that the impugned Circular has been issued by the State of Punjab to all the Chief Secretaries of all the States with a direction to satisfy the Director of Punjab State Lotteries regarding compliance of provisions of Section 4 of the Act before selling their respective lottery tickets in the State of Punjab and accordingly it appears the event to satisfy the Director of Punjab State Lotteries takes place in the State of Punjab. But the writ petitioners allege that since by the said circular, their lotteries and selling of lottery tickets have been affected and stopped by the respondent Nos. 2 and 3, the cause of action, at least in part has arisen within the territorial jurisdiction of this Court because the writ petitioners are running their lotteries from within the jurisdiction of this Court where they are having seat or residence. Merely because, the writ petitioners have been prevented from selling their lottery tickets, as alleged, cannot be said that any part of cause of action has arisen within the territorial Jurisdiction of this Court for the simple reason that if these facts were to give a cause of action, every State Government running its lotteries

would sue the State of Punjab in the local Court from where it is running the lotteries in the State of Punjab within where actual event of such, selling of lottery ticket is taking place. in that case the same would make the State of Punjab run about from Court to Court all over the country. if such action is allowed to Happen, it would be preposterous. it would be nothing but a permission to abuse the process of the Court. in order to have the jurisdiction of this Court on the basis of cause of action to be arisen wholly or in part there must be in existence of such fact which by itself forms part of the cause of action. in the instant case, this Court wonders how can any part of the cause of action, taking Into consideration of the fact position, arise within the jurisdiction of this Court.

14. As regards the expression "cause of action" Mulla's CPC succinctly defines as under:-

"The "Cause of action" means every fact which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court."

It means the whole of the material facts which it is necessary for the plaintiff to allege and prove in order to succeed and it has no relation to the defence that may be set up. in its wider sense, it means necessary condition for the maintenance of the suit and its restricted sense it means the circumstance forming the infringement of the right or the immediate occasion for the action. it is settled position of law that facts must form the integral part of the cause of action.

15. in the backdrop of such meaning of "cause of action", the question of territorial jurisdiction must be decided on the averments made in the writ petition. in deciding the objection of lack of jurisdiction the Court must take all the facts pleaded in support, of the cause of action, into consideration. Now let us see whether the averments made in the petition can give rise to the essential facts to form the integral part of the cause of action. I have meticulously perused the entire averments made in the body of the writ petition. But I am surprised to find that not a single averment has been made therein to the effect that a part of cause of action has arisen within the Jurisdiction of this court, on the other hand statements made in paragraphs 8, 16 and 18 of the writ petition expressly and explicitly show that the matter comes within the territorial jurisdiction of the State of Punjab. For better appreciation of the said factual situation paragraphs 8, 16 and 18 are quoted below: -

"8. That the petitioners beg to state that pursuant to the issuance of the aforesaid Impugned Circular dated 26.5.1999 the petitioner State is prevented from selling the lottery tickets of lotteries organised and run by it within the territorial jurisdiction of the State of Punjab. By virtue of the impugned Circular/ letter dated 26.5.1999, the respondent No. 3 is prohibiting the sale of lottery tickets of lotteries organized and run by the State of Arunachal Pradesh within

the territorial jurisdiction of the State of Punjab through the respondent No. 4 i.e. the Director General of Police, Punjab and further directed the officials of the Directorate of Lotteries, Govt. of Punjab (DSL in short), not to permit the petitioner State to sell the lottery tickets of the lotteries organised and run by the State of Arunachal Pradesh within the purview of the State of Punjab as a result of which, the police personnel accompanied by the aforesaid officials of the DSL are harassing the agents of the petitioners and have restrained them from selling the lottery tickets of lotteries organised and run by the State of Arunachal Pradesh.

16. That the petitioners beg to state that by dint of power conferred u/s 5 of the Act, 1998, a State Govt may, within the State, prohibit the sale of tickets of lotteries organised, conducted or promoted by every other State and the said Section 5 of the Act, 1998 has been interpreted by the Hon''ble Apex Court of our land in the Judgment rendered in the case of B.R. Enterprises v. State of U.P. and others (supra) to mean that such a ban could only be imposed if it is applied to the sale of tickets of a lottery organised, conducted or promoted by every other State, including its own lottery and as such the impugned Circular/Letter dated 25.6,1999 as well as the action of the respondent authorities in prohibiting the sale of lottery tickets of lotteries organised and run by the State of Arunachal Pradesh within the territorial Jurisdiction of the State of Punjab besides being violative of the Provisions of the Act, 1998 is also against the law laid down by the Hon''ble Supreme Court of India and hence, liable to be set aside and quashed by this Hon''ble Court.

18. That the petitioners beg to state that the respondent No. 3 State, most arbitrarily in a high handed manner and without authority of law, has prohibited the sale of lottery tickets of the lotteries organised and run by the State of Arunachal Pradesh within the territorial jurisdiction of the State of Punjab with a view to carry on monopoly business of lotteries and to increase the sale of lottery tickets of Punjab State Lotteries at the cost of the State of Arunachal Pradesh and as such the said action of the respondent authorities warrant immediate intervention of this Hon''ble Court."

16. More importantly, in reply to the Statements made in paragraphs 17 of this Misc. application i.e. Misc. case No. 785/2001 "that even otherwise the Writ Petition is liable to be dismissed for want of jurisdiction of this Hon''ble Court as neither the cause of action nor any part of it arises within the territorial jurisdiction of this Hon''ble Court.", the Writ petitioners/respondents in paragraph 22 of their affidavit-in-opposition states as follows:-

"That, the statements made in paragraph 17 of the application are absolutely incorrect and hence, denied by the answering deponent. it is denied that no part of the cause of action has arisen within the territorial jurisdiction of this Hon''ble Court and that this Hon''ble Court does not have jurisdiction to entertain the present writ petition. it is respectfully stated that as the writ petitioners State is within the jurisdiction of this Hon''ble Court and as the Arunachal State Lotteries

are organised and run from within the Jurisdiction of this Hon"ble Court and as the impugned action of the applicant/respondents No, 3 is affecting the running of the Arunachal State Lotteries, it is obvious that the cause of action for the present case arose within the territorial Jurisdiction of this Hon"ble Court. Hence, the contention of the applicant/ respondent No.3 to the effect that no part of the cause of action has arisen within the territorial jurisdiction of this Hon"ble Court is nothing but an absurd contention and the said contention deserves to be rejected straight way being without any substance. It is further stated that since the writ petitioner No.1 State is directly involved and affected by the impugned Circular/Letter dated 26.5.1999, the substantial part of the cause of action has in fact also arisen within the jurisdiction of this Hon"ble Court and therefore, the contention of the applicant/respondent No. 3 regarding the territorial jurisdiction ought to be thrown out and/ or rejected straight way by this Hon"ble Court."

17. After going through the aforesaid statements made in the writ petition as well as affidavit-in-opposition filed by the writ petitioners/ respondents, I do not find that any cause of action either wholly or in part has arisen within the territorial limit of this Court.

18. Strong reliance has been placed on Navinchandra's case (supra) in support of having territorial Jurisdiction of this Court. In the said case the Bombay High Court dismissed a writ petition holding that the Court could not entertain the same since the appellant/petitioners had prayed for quashing the complaint lodged at Shillong by the complainant filed deliberately with mala fide intention of exerting pressure and causing harassment to him to reverse the transaction relating to transfer of company's share which had entirely taken place at Mumbai. Their Lordships in Apex Court allowing the appeal, in paragraphs 27 and 45 at pages 650 and 655 respectively observed as follows:-

"27. Tested in the light to the principles laid down in the cases noted above the judgments of the High Court under challenge is unsustainable. The High Court failed to consider all the relevant facts necessary to arrive at a proper decision on the question of maintainability of the writ petition, on the ground of lack of territorial jurisdiction. The Court based its decision on the sole consideration that the complainant had filed the complaint at Shillong in the State of Meghalaya and the petitioner had prayed for quashing the said complaint. The High Court did not also consider the alternative prayer made in the writ petition that a writ of mandamus be issued to the State of Meghalaya to transfer the Investigation to Mumbai police. The High Court also did not take note of the averments in the writ petition filing of the complaint at Shillong was mala fide move on the part of the complainant harass and pressurizes the petitioners to reverse the transaction for transfer of shares. The relief sought in the writ petition may be one of the relevant criteria for consideration of the question but cannot be the sole consideration in the matter. On the averments made in the writ petition gist of which has been noted earlier it cannot be said that no part of the cause of action for filing the writ petition arose within the territorial jurisdiction of the Bombay

High Court.

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45. In the aforesaid situation it is almost Impossible to hold that not even a part of the cause of action has arisen at Bombay so as to deprive the High Court of Bombay of total jurisdiction to entertain the writ petition filed by the petitioner. Even the very fact that a major portion of the investigation of the case under the FIR has to be conducted at Bombay itself, shows that the cause of action cannot escape from the territorial limits of the Bombay High Court."

19. In arriving at the said conclusion in that case. Their Lordships had the occasion to deal at length as regards the widening power of the High Court under Article 226(2) of the Constitution in exercising its jurisdiction in relation to territories within which "the cause of action wholly or in part, arises". in paragraphs 36 and 37 the Apex Court at page 653 it was held as follows:-

"36. it was the said decision of the Constitution Bench which necessitated Parliament to bring the Fifteenth Amendment to the Constitution by which Clause (1-A) was added to Article 226. That Clause was subsequently renumbered as Clause (2) by the Constitution Forty-Second Amendment. Now Clause (2) of Article 226(2) reads, thus:-

"226(2) The power conferred by Clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories."

"37. The object of the amendment by inserting Clause (2) in the article was to supersede the decision of the Supreme Court in Election Commission v. Saka Venkata Subba Rao and to restore the view held by the High Court in the decision cited above. Thus, the power conferred on the High Court under Article 226 could be well be exercised by any High Court exercising jurisdiction in relation to the territories within which "the cause of action, wholly or in part, arises" and it no matter that the seat of the authority concerned is outside the territorial limits of the jurisdiction of that High Court. The amendment is, thus, aimed at widening the which of the area for reaching the writs issued by the different High Courts."

20. it is true that the amended provisions of Article 226(2) the power of the High Court has been widened in exercising its jurisdiction in relation to territories within which the cause of action wholly or in part arises which has been borrowed Section 20 of the Code of Civil Procedure. it is very much clear that a High Court can exercise power to issue directions, orders or writs for enforcement of any fundamental right conferred by Part-III of the Constitution or/

for any other purpose if the cause of action, wholly or in part arises within the territories in relation to which it exercises jurisdiction, notwithstanding that the seat of such Government or authority or the residence of the person against whom the directions, orders or writs are issued, is not within the said territories. In view of such legal position, the writ petitioners must indicate that at least part of the cause of action has arisen within the territorial jurisdiction of this Court which has glaringly not been found in the instant case.

21. But in Navinchandra's case (*supra*) itself, as relied on by the writ petitioners. Their Lordships referring to the decisions in *State of Rajasthan v. Swaika Properties* (*supra*) and *Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others*, kept in mind the caution to the High Court against encouraging the jurisdiction of the other High Courts merely on the ground of trivial events connected with the cause of action taking place within the territorial limits of the High Court to which the litigant approaches at his own will or convenience. It was held in paragraphs 41 and 43 at pages 654 and 655 as follows:-

"41. Even in the context of Article 226(2) of the Constitution this Court adopted the same interpretation to the expression "cause of action, wholly or in part, arises" vide *State of Rajasthan v. Swaika Properties*. A three Judge Bench of this Court in *Oil & Natural Gas Commission v. Utpal Kumar Basu* observed that it is well settled that the expression "cause of action" means that bundle of facts which the petitioner must prove, if traversed to entitle him to a judgment in his favour. Having given such a wide interpretation to the expression, *Ahmedi, J.* (as the learned Chief Justice then was) speaking for *M.N. Venkatachaliah, C.J.* and *B.P. Jeevan Reddi, J.* utilised the opportunity to caution the High Courts against transgressing into the jurisdiction of the other High Courts merely on the ground of some insignificant event connected with the cause of action taking place within the territorial limits of the High Court to which the litigants approach at his own choice or convenience. The following are such observations -

"If an impression gains ground that even in cases which fall outside the territorial jurisdiction of the Court, certain members of the Court would be willing to exercise jurisdiction on the plea that some event, however trivial and unconnected with the cause of action had occurred within the jurisdiction of the said Court, litigants would seek to abuse the process by carrying the cause before such members giving rise to avoidable suspicion. That would lower the dignity of the institution and put the entire system to ridicule. We are greatly pained to say so but if we do not strongly deprecate the growing tendency we will, we are afraid be falling in our duty to the institution and the system of administration of justice. We do hope that we will not have another occasion to deal with such a situation."

43. We make it clear that the mere fact that FIR was registered in a particular State is not the sole criteria to decide that no cause of action has arisen even partly within the territorial limits of jurisdiction of another State. Nor are we to be understood that any person can create a fake cause of action or even concoct

one by simply jutting into the criteria limits or another State or by making a sojourn or even a permanent residence therein. The place of residence of the person moving a High Court is not criterion to determine the contours of the cause of action in that particular writ petition. The High Court before which the writ petition is filed must ascertain whether any part of the cause of action has arisen within the territorial limits of its jurisdiction. it depends upon the facts in each case."

22. The principle laid down by the Apex Court in Navinchandra's case (supra). State of Rajasthan's case (supra) and ONGC's case (supra) is very clear and explicit. it is Judicial mandate that the High Court must ascertain whether cause of action wholly or in part of it has arisen within the territorial limits of its jurisdiction which shall depend upon the facts in each case. if any part of the cause of action for filing the writ petition arises within the territorial limits jurisdiction of the Court, the said Court unhasitatingly must exercise its jurisdiction over the same.

23. in State of Rajasthan's case (supra), the notice intimating the State Government's proposal to acquire a large apart of the land in the State of Rajasthan at Jaipur, for a public purpose owned by the respondent-Company having its registered office at Calcutta, was duly served upon the respondent at their Calcutta Office. The respondent resisted the said acquisition but having failed to get the land released form acquisition field a writ petition under Article 226 of the Constitution before the Calcutta High Court challenging the acquisition wherein a rule nisi was issued and an interim ex-parte prohibitory order was granted restraining taking of possession of the acquired land, but on the facts and circumstances of the case, the Apex Court held that in such premises the cause of action neither wholly nor in part arose within the territorial jurisdiction of the Calcutta High Court. in the said case. Their Lordships held as follows:-

"(7) Upon these facts, we are satisfied that the cause of action neither wholly or in part arose within the territorial limits of Calcutta High Court and therefore the learned Single Judge had no jurisdiction to issue a rule nisi on the petition filed by the respondents under Article 226 of the Constitution or to make the ad interim ex parte prohibitory order restraining the appellants from taking any steps to take possession of the land acquired. Under sub-section (5) of Section 52 of the Act the appellants were entitled to require to respondents to surrender or deliver possession of the lands acquired forthwith and upon their failure to do so take immediate steps to secure such possession under sub-section (6) thereof.

(8).... The mere service of notice u/s 52(2) of the Act on the respondents on their registered office at 18B Brabourne Road, Calcutta, i.e. within the territorial limits of the State of West Bengal could not give rise to a cause of action within the territory unless the service of such notice was an integral part of the cause of action. The entire cause of action culminating in the acquisition the land u/s 52(1) of the Act arose within the State of Rajasthan i.e within the territorial jurisdiction of the Rajasthan High Court at the Jaipur Bench. The answer to the

question whether service of notice is an integral part of the cause of action within the meaning of Article 226(2) of the Constitution must depend upon the nature of impugned order giving rise to a cause of action. The notification dated February 8, 1984 issued by the State Govt. U.S 52(1) of the Act became effective the moment it was published in the Official Gazette as thereupon the notified land became vested in the State Government free from all encumbrances. it was not necessary for the respondents to plead the service of notice on them by the Special Officer. Town Planning Department Jaipur u/s 52(2) from the grant of an appropriate writ, direction or order under Article 226 of the Constitution for quashing the notification issued by the State Government u/s 52(1) of the Act if the respondents felt aggrieved by the acquisition of their lands situate at Jaipur and wanted to challenge the validity of the notification issued by the State Government of Rajasthan u/s 52(1) of the Act by a petition under Article 226 of the Constitution, the remedy of the respondents for the grant of such relief had too be sought by filing such a petition before the Rajasthan High Court, Jaipur Bench, where the cause of action wholly or in part arose."

24. in *Aligarh Muslim University v. Vinay Engineering Enterprises Ltd.*, (1994) 4 SCC 710 the Apex Court categorically held that when entire events relating to contract in question have been taken place within the jurisdiction of Aligarh Court, the High Court of Calcutta have no jurisdiction merely because the respondent was a Calcutta based firm. Their Lordships held as follows :-

"(2) We are surprised, not a little, that the High Court of Calcutta should have exercised jurisdiction in a case where it had absolutely no jurisdiction. The contracts in question were executed at Aligarh, the construction work was to be carried out at Aligarh, even the contracts provided that in the event of dispute the Aligarh Court alone will have jurisdiction. The Arbitrator was from Aligarh and was to function there, merely because the respondent was a Calcutta based firm, the High Court seems to have exercised jurisdiction where it had none by adpoting a queer line of reasoning. We are constrained to say that this is case of abuse of jurisdiction and we feel that the respondent deliberately moved the Calcutta High Court ignoring the fact that no part of the cause of action had arisen within the jurisdiction of that Court. it clearly shows that the litigation filed in the Calcutta High Court was thoroughly unsustainable."

25. in *O.N.G.C's case* (supra) which had been discussed and taken into consideration by the Apex Court in dealing with *Navinchandra's case* (supra), Their Lordships candidly opined that merely because the petitioner resides within the territorial jurisdiction of the Calcutta High Court even though the averments made in the petition did not disclose that even a part of cause of action arose within the territorial jurisdiction of the Calcutta High Court it has no Jurisdiction to entertain the writ petition of the petitioner.

26. Adopting the submissions made on behalf of the State of Punjab/ applicant in Misc. Case No. 785/2001 Mr. Borbara, learned counsel appearing on behalf of the

applicant in this Misc. Case No. 784/ 2001(W.P.C. No. 3511/2001), advancing his limited argument, submits that in passing the impugned order which is sought to be vacated/cancelled by the application, this Court has virtually granted the entire main reliefs, as prayed for in the writ petition itself without going into the vital aspect that there is want of territorial jurisdiction of this Court to entertain this writ petition. He contends that the present interim order contains three limbs i.e.:-

(i) The impugned Circular dated 26.5.1999 shall not be given effect to in respect of the writ petitioners namely State of Nagaland and its authorised distributors or agents for organisation of lotteries of the State concerned,

(ii) The respondent Nos. 3 and 4 i.e. the applicant and the Director General of Police, State of Punjab, Chandigarh respectively shall not prohibit or restrict the sale of lotteries of the Nagaland State Lottery by the petitioners and its distributors/agents within the territory of Punjab, and

iii) The respondent Nos. 3 and 4 not to interfere with the petitioners in the matter to secure ends of justice until further order of this Court. Those reliefs apparently go to show that the writ petitioners have obtained all the main reliefs which is contrary to the settled position of law.

In support of the said submission, he has referred to paragraph 10 of the decision in the State of Rajasthan and Others Vs. Swaika Properties and Another, which is extracted, thus:-

"10. Quite recently. Chinnappa Reddi, J. Speaking for the Court in Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, administered strong admonition deprecating the practice of High Court of granting ad interim ex-parte orders which practically have the effect of the grant of the main relief in the petition under Article 226 of the Constitution irrespective of the fact whether the High Court had any territorial jurisdiction to entertain such a petition or whether the petition under Article 226 was intended and meant to circumvent the alternative remedy provided by law or filed solely for the purpose of obtaining interim orders and thereafter delaying and protracting the proceedings by one device or the other particularly in matters relating to public revenue or implementation of various measures and schemes undertaken by the Government or the local authorities for general public benefit. Although the powers of the High Courts under Article 226 of the Constitution are far and wide and the Judges must ever be vigilant to protect the citizen against arbitrary executive action, nonetheless, the Judges have a constructive role and therefore there is always the need to use such extensive powers with due circumspection. There has to be in the larger public Interest and element of self ordained restraint. We hope and trust that the High Court will determine the extent of its territorial jurisdiction before making such interlocutory orders."

27. No doubt there is force in those submission. But what shocks me is that the interim order has been obtained without making any whisper in any of the

averments in the body of the writ petition as to whether any cause of action either wholly or in part has ever arisen within the territorial jurisdiction of this Court to invoke the power of the High Court under Article 226 of the Constitution. It appears that the Writ petitioners, having placed before the Court only the impugned Circular dated 26.5.1999 and the photocopy of the Act itself (Annexures-1 and 2 to the Writ Petition) without any further supporting documents to show any cause of action at least in part arises within the territorial jurisdiction of this Court, has obtained the present interim order.

28. That being the position, having regard to the principle laid down in the above cited cases and also upon hearing the learned counsel of the parties, I safely hold that mere issuance of the impugned Circular by the State of Punjab asking the other States to satisfy the Director of Punjab State Lottery as regards the compliance of the provisions of the Act, more particularly Section 4 before selling any Lottery tickets in that State, allegedly affecting the rights of the petitioners/respondents to sell their Lottery tickets in that State within the territorial jurisdiction of the State of Punjab, shall not confer any territorial jurisdiction of this Court for entertaining the present writ petition enabling them to obtain such Interim order. in view of the same, I am of the considered view that no cause of action either wholly or in part has arisen within the territorial jurisdiction of this Court.

29. Although the entire discussions herein have been exclusively confined to the question of territorial jurisdiction of this Court, perusing the pleadings of the parties, I feel impelled to note that on a bare perusal of the contentions made in the Writ petition itself it appears that the petitioner has not approached this Court with clean hand due to the very fact that this petition seems to be basically preferred by the private parties i.e. petitioner Nos. 2 and 3 in the name of the State of Arunachal Pradesh as evident from averments made in the last sentence of paragraph 1 of the writ petition which reads as follows:-

"...and as such the private parties have a right of selling State Organised Lottery tickets and if any order and/or Circular and/ or letter is issued affecting right of a State imposing restrictions, the right of the private parties are also affected directly."

The said proposition is also clear from the affidavit accompanying the writ petition which was admittedly sworn by the respondent No. 3 on behalf of respondent No. 2 without being authorised by the respondent No. 1. Later on during the course of hearing of the Misc. application which continued for 5 (five) days, perhaps on coming to know about such defect, an attempt has been made to cure the said defect by filing an additional affidavit sworn by the Secretary, State Lotteries, Arunachal Pradesh acknowledging the averments made in the Writ petition to be true to the knowledge of the deponent. Such filing of subsequent additional affidavit after obtaining the ex parte interim order itself, cast a cloud on the conduct of the writ petitioners. More importantly no records whatsoever has also been produced before this Court to support that the State of

Arunachal Pradesh has had its own authority or has authorised the respondents/petitioners No. 2 and 3 to prefer this writ petition in the present form.

30. Upon hearing the learned counsel for the parties and also perusal of the materials available on record and including the pleadings of the parties, I am also of the considered view that this writ petition is also lacks bona fide which itself resulted in the abuse of the process of this Court.

31. Once it is found that the writ petition suffers from the inherent lack of territorial jurisdiction and bonafide, it can be safely held that there is no prima-facie case in favour of the writ petitioners entitling them to obtain any ex-parte interim relief. in view of the same, the question of determination of the other two principles i.e balance of convenience and irreparable loss and injury would be quite irrelevant.

32. For the reasons, discussions and observations indicated above, with all respect, I am not in agreement with the interim orders dated 19.5.2000 passed by this Court and accordingly both the Misc. Applications succeed and both the interim orders dated 19.5.2001 are hereby vacated.

33. Since this Court is satisfied that the respondents/writ petitioners have not acted bona fide either in invoking the jurisdiction of this Court or approaching with clean hand, this Court considers that it is apt and necessary to impose exemplary costs upon the writ petitioners/ respondents in both the Misc. cases for obtaining the interim order in question by abusing the process of the Court, in the light of the Apex Court's enunciation in Aligarh Muslim University's case (supra) and O.N.G.C's case (supra) wherein the exemplary costs were slapped on such similar fact situation. Accordingly, the said cost is quantified at Rs.30,000 (thirty thousand) and I direct the writ petitioners/respondents jointly to pay the said amount by way of costs by depositing the same before the Registrar General of this Court who shall in turn deposit the said amount in the account of Prime-Minister's National Relief Fund, New Delhi within a period of two months from today.

34. This disposes of the Misc. applications.