
(2012) 08 JH CK 0164
In the Jharkhand High Court
Case No : WP (C) No. 7119 of 2006

Sunil Kumar Jain

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 16-08-2012

Acts Referred:

Constitution of India, 1950 — Article 19(1)(g)
Penal Code, 1860 (IPC) — Section 120B, 420

Citation : (2012) 4 JLJR 43

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Dilip Jerath, for the Appellant;

Final Decision : Allowed

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the parties. This writ petition has been preferred for direction upon the respondent not prohibit and restrict the petitioner to carry on business of selling and marketing of online lottery organized by the other States.

2. The contention of the petitioner is that he entered into an agreement with Pooja Lotto Private Ltd. (Annexure-1) for selling, marketing and to establish technical facilities for the Play Zone Computer Online Network Lottery representing the State of Arunachal Pradesh. However, for the alleged offence, an FIR was lodged against the petitioner being Jamtara P.S. Case No. 178 of 2006 under the provisions of Sections 420 and 120B of the Indian Penal Code and also u/s 11 of the Bengal Gambling Act as well.

3. It is submitted by learned counsel for the petitioner that petitioner has been released on bail by the Court of Chief Judicial Magistrate, Jamtara vide order dated 24.8.2006 (Annexure-4) and on furnishing security, seized articles were also released vide order dated 8.11.2006. Learned counsel for the petitioner further submits that in similar circumstances this Court vide judgment dated

16.1.2004 passed in W.P.(C) No. 6063 of 2002 in the case of Manish Kumar Gupta vs. The State of Jharkhand and Another observed that there is no law banning the activity of lottery in the State of Jharkhand. The respondent-State has relied on the provision of Bihar Ban on Lotteries Act in the said case, which was declared ultra vires by the Division Bench Judgment of Patna High Court reported in 1994(1) BLJR 702 [: 1994(1) PLJR 554] and in that view of the matter, a writ of Mandamus was issued directing the concerned respondents not to interfere with the sale of lottery tickets by the said petitioner organized by the other States. It appears that by the said order, it was made clear that it will not affect the criminal trials, which was initiated against the said petitioner. Learned counsel for the petitioner further submits that the petitioner has a Fundamental Right to carry on business or occupation under Article 19(1)(g) of the Constitution of India. It is further submitted that activity of lottery being carried out by the petitioner is not prohibited by any Central Government Act either. In the circumstances, he submits that impugned action of the respondent imposing restriction to carry on trade, business or occupation under Article 19(1)(g) of the Constitution of India is illegal and arbitrary, without there being any law so as to impose reasonable restriction.

4. However, learned counsel for the respondents submits that petitioner was operating the said lottery business without any licence granted by the Government of Jharkhand and therefore, the impugned actions were taken against him. However, learned counsel for the respondent-State has not disputed this legal position that there is no State law prohibiting, regulating or controlling the activity to carry out the business in lottery within the State of Jharkhand.

5. In the circumstances, it appears that activity of carrying out lottery business in the State of Jharkhand is not regulated at the moment by any valid law by means of any State legislation or any Union law prohibiting the same. In the circumstances, the impugned action of the respondent authorities to prevent the petitioner from carrying out such activity is unsustainable in law.

6. Accordingly, writ of Mandamus is issued to the concerned respondents not to interfere with the sale of lottery ticket by the petitioner organized by other State in the State of Jharkhand. However, it is made clear that this order shall not affect the criminal trial, which is pending against the petitioner in connection with any prosecution initiated for alleged offence, as stated hereinabove. Accordingly, this writ petition is allowed in the aforesaid terms.