

(2023) 05 SC CK 0045

Supreme Court Of India

Case No: Original Suit No. 1 Of 2021

State Of Meghalaya

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision: May 11, 2023

Acts Referred:

- Constitution Of India, 1950 - Article 12, 14, 32, 131, 131A, 145, 226, 298(b), 301
- Code Of Civil Procedure, 1908 - Section 9, 10, 15, 113, Order 37, Order 6 Rule 17
- Lotteries (Regulation) Rules, 2010 - Rule 5
- Supreme Court Rules, 2013 - Order 26, Order 26 Rule 6
- Lotteries (Regulation) Act, 1998 - Section 4, 5, 6, 7, 8, 9

Hon'ble Judges: Dinesh Maheshwari, J; Sanjay Kumar, J

Bench: Division Bench

Advocate: Mukul Rohatgi, Amit Kumar, General, Avijit Mani Tripathi, Rekha Bakshi, Atul Kumar, Shaurya Sahay, Aditya Shankar Pandey, Himanshu Sehrawat, Vikas Bansal, T.K. Nayak, Marbiang Khongwir, Upendra Mishra, P.S. Negi, R Venkataramani, Sanjay Jain, Chinmayee Chandra, Kanu Agarwal, Padmesh Mishra, Madhav Sinhal, Swati Ghildiyal, Anandh Venkataramani, Vinjayalakshmi Venkataramani, Vinayak Mehrotra, Mansi Sood, Chitvan Singhal, Sonali Jain, Abhishek Kumar Pandey, Mahfooz Ahsan Nazki, Rajeswari Mukherjee, Niti Richhariya, Kv Girish Chowdary, T Vijaya Baskar Reddy, Abhimanyu Tewari, Abhimanyu Tewari, Eliza Bar, Devajit Saikia, (AG Assam), Shuvodeep Roy, Rukmini Barua, Padmini Barua, Sai Shashank, Deepayan Dutta, Abhinav Mukerji, Bihu Sharma, Pratishtha Vij, Akshay Shrivastava, Sumeer Sodhi, Devashish Tiwari, Abhay Anil Anturkar, Dhruv Tank, Prashant Bhagwati, Deepanwita Priyanka, Alok Sangwan, Sr. Sumit Kumar Sharma, Rajat Sangwan, Dr. Monika Gusain, Manish Kumar, Abhaya Nath Das, Gulam Rabbani, Vijay Kumar, Riya Soni, Thithiksha Padmam, Saket Gautam, Shivangi Singh, Alpna Sharma, S S Bandyopadhyay, Satish Kumar, Arunabh Chowdhury, Pallavi Langar, Vishnu Sharma, Karma Dorjee, Shubhranshu Padhi, Pallav Shishodia, C. K. Sasi, Abdulla Naseeh V T, Meena K Poulse, Saurabh Mishra, Pashupathi Nath Razdan, Nirmal Kumar Ambastha, Maitreyee Jagat Joshi, Astik Gupta, Ayushi Mittal, Vipul Abhishek, Kuldeep Kumar Shukla, Shrirang B. Varma, Siddharth Dharmadhikari, Aaditya Aniruddha Pande, Bharat Bagla, Sourav Singh, Pukhrambam Ramesh Kumar, Karun Sharma, Anupam Ngangom, Nirnimesh Dube, Siddhesh Kotwal, Ana Upadhyay, Manya Hasija, Nihar Dharmadhikari, Rohini Musa,

Shibashish Misra, Ajay Pal, Mayank Dahiya, Sugandh Rathor, Dr. Manish Singhvi, Shubhangi Agarwal, Arpit Prakash, D. K. Devesh, Sameer Abhyankar, Vani Vandana Chhetri, Nishi Sangtani, Sugandh Rathore, Amit Anand Tiwari, Sabarish Subramanian, Devyani Gupta, C Kranthi Kumar, Vishnu Unnikrishnan, Naman Dwivedi, Danish Saifi, Sriharsha Peechara, Rajiv Kumar Choudhry, Pallavi, Duvvuri Subrahmanya Bhanu, Sudarshan Singh Rawat, Saakshi Singh Rawat, Harish Pandey, Madhumita Bhattacharjee, Chirag M. Shroff, G. Indira, Shreekant Neelappa Terdal, Amrish Kumar, Gurmeet Singh Makker, Aravindh S., Uma Bhuvaneshwari. C, Abbas

Judgement

1. By way of these proceedings, registered as Original Suit No. 1 of 2021, the State of Meghalaya seeks to invoke the original jurisdiction of this Court

under Article 131 of the Constitution of India for a declaration that Sections 5, 6, 7, 8 and 9 of the Lotteries (Regulation) Act, 1998 [â€™the Act of

1998â€™], and Rule 5 of the Lotteries (Regulation) Rules, 2010 [â€™the Rules of 2010â€™], are ultra vires and unconstitutional, and for other reliefs.

1.1. The reliefs claimed in the plaint read as under: -

â€™The plaintiff, therefore, prays that this Honâ€™ble Court may be pleased to pass a judgment and decree granting following relief:

a) Declare and hold Section 5 of the Lotteries (Regulation) Act, 1998 (Act No. 17 of 1998) and the Rules framed thereunder as being ultra-vires to

the Constitution of India and unconstitutional; and

b) Declare and hold Section 6 of the Lotteries (Regulation) Act, 1998 as being ultra-vires to the Constitution of India and unconstitutional as being

violative of Article 14, to the extent it empowers the Central Government to pass orders prohibiting a lottery organized in contravention of provisions of

Sections 5 of the Lotteries (Regulation) Act, 1998; and

c) Declare and hold Section 7, 8, 9 of the Lotteries Regulation Act, 1998 as being ultra-vires to the Constitution of India and unconstitutional as being

violative of Article 14 to the extent they provide for penal consequences for violation of Section 5 of the Lotteries (Regulation) Act, 1998; and

d) Declare and hold Rule 5 of the Lotteries (Regulation) Rules 2010 as ultra-vires to the Constitution of India and unconstitutional as violative of

Article 14; and

e) Grant permanent injunction, restraining the Defendant Union of India from issuing orders under Section 6 of the Lotteries (Regulation) Act, 1998

prohibiting sale of tickets of a lottery organized in contravention of provisions of Sections 5 of the Lotteries (Regulation) Act, 1998, in relation to the lotteries organized by the Plaintiff; and

f) Grant permanent injunction, restraining the Defendant Union of India from initiating or taking any penal action under Section 7, 8 and 9 of the

Lotteries (Regulation) Act, 1998 against any person for violation of Section 5 and 6 of the Lotteries (Regulation) Act, 1998 to the extent it relates to

the lotteries organized by the Plaintiff; and

g) Grant permanent injunction, restraining the Defendant Nos. 2 to 36 States and Union Territories from prohibiting sale of tickets of lottery organized

by the Plaintiff State in their respective jurisdiction; and

h) Award costs against such Defendant who may contest the Plaintiff's claim to relief; and/or

i) Pass such further or other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

2. Section 5 of the Act of 1998 is to the effect that a State Government may prohibit the sale of tickets of a lottery organized, conducted or promoted

by every other State within its territories. Section 6 thereof empowers the Central Government to prohibit a lottery organized, conducted or promoted

in contravention of Section 4 or where tickets of such lottery are sold in contravention of Section 5, by an order published in the Official Gazette.

Section 7 of the Act of 1998 deals with penalties, which may extend to rigorous imprisonment for 2 years or with fine or both.

Section 8 states that offences under the Act of 1998 shall be cognizable and non-bailable. Section 9 of the Act of 1998 deals with offences by

companies and identifies those within the management who would be deemed guilty of the offence and liable to be proceeded against and punished.

The State of Meghalaya assails Sections 6, 7, 8 and 9 of the Act of 1998, insofar as they pertain to contraventions of Section 5 of the Act of 1998.

Rule 5 of the Rules of 2010 details the procedure to prohibit sale of lottery tickets, in terms of the provisions of the Act of 1998.

3. In addition to the declaratory reliefs, the State of Meghalaya has also sought a perpetual injunction restraining the Union of India from issuing orders under Section 6 of the Act of 1998 in relation to the lotteries organized by it; a perpetual injunction restraining the Union of India from initiating or taking any penal action under Sections 7, 8 and 9, for violation of Sections 5 and 6 of the Act of 1998, in relation to the lotteries organized by it; and a perpetual injunction restraining the States and Union Territories, viz., defendant Nos. 2 to 36, from prohibiting the sale of lottery tickets organized by it in their respective jurisdictions. Lastly, the State of Meghalaya has also sought the suit costs against the contesting defendants.

4. Presently, we have heard learned counsel for the contesting parties on the question of maintainability of the suit; and we propose to deal only with this issue of maintainability and the aspects supplemental.

4.1. It is the contention of the Union of India and several of the impleaded States that this suit is not maintainable. It has essentially been contended on

behalf of the Union of India by the learned Attorney General that in the case of *State of Madhya Pradesh v. Union of India and Anr.*: (2011) 12 SCC

268, this Court has ruled that recourse to original jurisdiction under Article 131 of the Constitution of India is not permissible to challenge the vires of a

statute; and the question is referred to a Larger Bench in Original Suit No. 1 of 2012. It has also been submitted that in Original Suit Nos. 1 of 2020, 1

of 2023 and 3 of 2023, similar question is pending consideration before this Court. It has, therefore, been submitted that either the matter be referred to

a Larger Bench or the decision of Larger Bench be awaited. It has been argued on behalf of the State of Kerala that Article 131 of the Constitution

requires that the dispute raised thereunder should involve a question, be it of law or fact, on which the existence or extent of a legal right would

depend; and it is asserted that the State of Meghalaya cannot claim any "legal right" to sell its lottery tickets in other States. It is further

contended that the business of lotteries would be a form of gambling and amount to *res extra commercium* and, therefore, the State of Meghalaya

cannot claim any legal right to conduct its lottery business in another State against the will of that State. Maintainability of the present suit has been

questioned on behalf of the State of Bihar and the State of Assam too.

4.2. On the other hand, the State of Meghalaya, supported by the States of Nagaland and Sikkim, would point out that a 6-Judge Bench of this Court had an occasion to deal with the challenge by a State to a parliamentary legislation under Article 131 of the Constitution in *State of West Bengal v.*

Å Union of India: AIR 1963 SC 1241 and assert that it is trite that a State can maintain such a challenge by invoking the original jurisdiction of this

Court. It has also been contended that the decision in the case of *State of Madhya Pradesh (supra)* may not be considered to be an authority for the

proposition that the present suit is not maintainable at all

5. Article 131 of the Constitution of India reads as under: -

“131. Original jurisdiction of the Supreme Court.- Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of

any other court, have original jurisdiction in any dispute-

(a) between the Government of India and one or more States;

or

(b) between the Government of India and any State or States on one side and one or more other States on the other; or

(c) between two or more States,

if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:

Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, sanad or other similar

instrument which, having been entered into or executed before the commencement of this Constitution, continues in operation after such

commencement, or which provides that the said jurisdiction shall not extend to such a dispute.”

5.1. Rule 6 of Order XXVI of the Supreme Court Rules, 2013 reads as under: -

“6. The plaint shall be rejected: -

(a) where it does not disclose a cause of action.

(b) where the suit appears from the statement in the plaint to be barred by any law.”

6. Significantly, in *Tashi Delek Gaming Solutions Ltd. v. State of Karnataka and Ors.*: (2006) 1 SCC 442, this Court had an occasion to deal with the scope and ambit of Article 131 of the Constitution. This Court observed that Article 131 would be attracted where adjudication is necessary in relation to a legal right of one State or the Union of India vis-à-vis other States, as the case may be. It was further observed that the expression "legal right" had indisputably received a liberal interpretation by this Court from time to time. The issue in that case was the right of the agents of the States of Sikkim and Meghalaya to challenge, by way of a writ petition, a notification issued by the State of Karnataka, under the Act of 1998, which affected their lottery business in that State. The Karnataka High Court held against them on the ground that it would be for their principals, i.e., the States of Sikkim and Meghalaya, to invoke the jurisdiction of the Supreme Court under Article 131 of the Constitution. In that regard, this Court observed that even if the States of Sikkim and Meghalaya filed suits against the State of Karnataka under Article 131, the independent right of the agents to maintain an action before the appropriate forum could not be taken away. It was further observed that as Article 131 would not include even a statutory corporation, as the enlarged definition of a "State" under Article 12 would not extend to Article 131, it would not be permissible for the agents, even if they joined together with their principals, viz., the States of Sikkim and Meghalaya, to maintain a suit under Article 131. Further, this Court observed that if the States of Sikkim or Meghalaya had intended to sue the State of Karnataka independently, in terms of Article 131 of the Constitution, the only forum where the dispute between them could have been resolved was this Court alone. It was, accordingly, held that the writ petitions filed by the agents were maintainable.

7. Reference may also be made to the case of *State of Rajasthan and Ors. v. Union of India and Ors.*: (1977) 3 SCC 592 decided by a 7-Judge Bench of this Court, wherein it was observed that a State's right to seek enforcement of a legal right arising under the Constitution cannot be thrown out in limine as being outside the scope and ambit of Article 131. This Court noted that every constitutional question would concern allocation

and exercise of Governmental power and, therefore, no constitutional question can fail to be political, but what this Court would not entertain under

Article 131 is a purely political dispute between States which does not involve determination of any legal or constitutional right or obligation.

8. Of particular significance in this context is the 7-Judge Bench decision of this Court in *State of Karnataka v. Union of India and Anr.*: (1977) 4 SCC

608, wherein it was observed in the concurring opinion with majority as under: -

“162. The jurisdiction conferred on the Supreme Court by Article 131 of the Constitution should not be tested on the anvil of banal rules which are

applied under the Code of Civil Procedure for determining whether a suit is maintainable. Article 131 undoubtedly confers “original jurisdiction” on

the Supreme Court and the commonest form of a legal proceeding which is tried by a Court in the exercise of its original jurisdiction is a suit. But a

constitutional provision, which confers exclusive jurisdiction on this Court to entertain disputes of a certain nature in the exercise of its original

jurisdiction, cannot be equated with a provision conferring a right on a civil court to entertain a common suit so as to apply to an original proceeding

under Article 131 the canons of a suit which is ordinarily triable under Section 15 of the Code of Civil Procedure by a Court of the lowest grade

competent to try it. Advisedly, the Constitution does not describe the proceeding which may be brought under Article 131 as a “suit” and

significantly, Article 131 uses words and phrases not commonly employed for determining the jurisdiction of a court of first instance to entertain and

try a suit. It does not speak of a “cause of action”, an expression of known and definite legal import in the world of witness actions. Instead, it

employs the word 'dispute,' which is no part of the elliptical jargon of law. But above all, Article 131 which in a manner of speaking is a self-contained

code on matters falling within its purview, provides expressly for the condition subject to which an action can lie under it. That condition is expressed

by the clause : “if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends”.

By the very terms of the article, therefore, the sole condition which is required to be satisfied for invoking the original jurisdiction of this Court is that

the dispute between the parties referred to in clauses (a) to (c) must involve a question on which the existence or extent of a legal right depends.

163. The quintessence of Article 131 is that there has to be a dispute between the parties regarding a question on which the existence or extent of a

legal right depends. A challenge by the State Government to the authority of the Central Government to appoint a Commission of Inquiry clearly

involves a question on which the existence or extent of the legal right of the Central Government to appoint the Commission of Inquiry depends and

that is enough to sustain the proceeding brought by the State under Article 131 of the Constitution. Far from its being a case of the "omission of the

obvious", justifying the reading of words into Article 131 which are not there, I consider that the Constitution has purposefully conferred on this Court

a jurisdiction which is untrammelled by considerations which fetter the jurisdiction of a Court of first instance, which entertains and tries suits of a civil

nature. The very nature of the disputes arising under Article 131 is different, both in form and substance, from the nature of claims which require

adjudication in ordinary suits."

8.1. Therefore, though titled as a "suit", a proceeding under Article 131 of the Constitution of India cannot be likened to a civil suit under the

Code of Civil Procedure, 1908 ["CPC"]. In any event, Section 9 CPC also grants wide jurisdiction to the Court to try all civil suits unless they

are barred, either expressly or impliedly.

9. We may also note that Part III(A) of the Supreme Court Rules, 2013, deals with original suits filed before this Court. Order XXVI therein deals

with "Plaints" and Order XXVI Rule 6 states that a plaint shall be rejected "

(a) where it does not disclose a cause of action or (b) where the suit appears from the statement in the plaint to be barred by any law. These Rules

were framed by this Court in exercise of power under Article 145 of the Constitution. However, the premise that any "law" could bar the

original jurisdiction of this Court under Article 131, i.e., a suit as it appears from the statement in the plaint, is a misnomer as an enacted "law"

cannot possibly control the scope and ambit of a constitutional provision.

10. Noticeably, in *B.R. Enterprises v. State of U.P. and Ors.*: (1999) 9 SCC 700, this Court affirmed that "lottery" was a form of gambling and

merely because a lottery is run by the State itself, it would not change its character as *res extra commercium*. However, it was observed that sale of lottery tickets by a State, though not a "trade" under Article 301 of the Constitution, would still be a "business" within the meaning of Article 298(b) of the Constitution. Dealing with Section 5 of the Act of 1998, this Court observed that it is only a State, which has decided as a policy in public interest to make itself a lottery-free zone, that can prohibit sale of lotteries of other States within its territories. Therefore, a State conducting a lottery can claim a right to do so under Article 298(b) of the Constitution.

11. It is no doubt true that in *State of Madhya Pradesh v. Union of India and Anr.*: (2011) 12 SCC 268, while dealing with an amendment application filed under Order VI Rule 17 CPC in an original suit under Article 131 of the Constitution, this Court noticed that the plaintiff, by way of amendment, was seeking to challenge the validity of a Central law; and held that, normally, for questions relating to validity of Central or other laws, the appropriate forum is the extraordinary writ jurisdiction under Articles 32 and 226 of the Constitution of India and not an original suit filed under Article 131 of the Constitution. Reference was made to Article 131-A, which was inserted with effect from 01.02.1977 by the Constitution (42nd Amendment) Act, 1976, and was thereafter repealed by the Constitution (43rd Amendment) Act, 1977, with effect from 13.04.1978. Be it noted that Article 131-A was introduced so as to confer exclusive jurisdiction upon the Supreme Court to decide the constitutional validity of Central laws by depriving the High Courts of jurisdiction to do so. However, it was noted that hardship was being caused to persons living in distant parts of India owing to Article 131-A, amongst other Articles, and it was decided to omit such Articles, including Article 131-A, from the Constitution by way of the Constitution (43rd Amendment) Act, 1977. Therefore, it is difficult to say that the omission of Article 131-A was effected in the context of denuding the Supreme Court of its jurisdiction to deal with the constitutional validity of Central or State laws as, perhaps, assumed in the case of *State of Madhya Pradesh* (supra).

However, basing on such an assumption, this Court observed that when Central laws can be challenged in the State High Courts as well as before this

Court in writ jurisdiction, normally, no recourse can be permitted to challenge the validity of a Central law by invoking the exclusive jurisdiction of this

Court under Article 131 of the Constitution. This view, however, lost sight of the fact that Article 131 confers "original jurisdiction"™ on this Court

not only on the strength of the nature of the dispute but also the status of the party invoking the remedy, i.e., either the Union of India or a State,

whereas the liberty to challenge the validity of Central laws or State laws under Article 226 or Article 32 would be available to all. The relevant

observations in this case had been as under: -

20. By way of the present amendment, the plaintiff State of M.P. is seeking to challenge the validity of the Central law in a proceeding (suit)

initiated under Article 131 of the Constitution. Normally, for questions relating to validity of Central or other laws, the appropriate forum is the

extraordinary writ jurisdiction under Articles 32 and 226 of the Constitution of India in a writ petition and not an original suit filed under Article 131

which vests exclusive jurisdiction on this Court as regards the disputes enumerated therein. It is relevant to point out that Article 131-A of the

Constitution inserted by the Constitution (forty-second Amendment) Act, 1976, provides for exclusive jurisdiction to this Court in regard to questions as

to constitutionality of Central laws. The said Article 131-A viewed as substantially curtailing the power of judicial review of the writ courts, that is, the

High Courts under Article 226 and this Court under Article 32 was omitted vide the Constitution (forty-third Amendment) Act, 1977. It follows that

when the Central laws can be challenged in the State High Courts as well and also before this Court under Article 32, normally, no recourse can be

permitted to challenge the validity of a Central law under the exclusive original jurisdiction of this Court provided under Article 131.

12. In *State of Jharkhand v. State of Bihar and Anr*: (2015) 2 SCC 431, another co-ordinate Bench of this Court recorded its inability to agree with the

conclusion drawn in *State of Madhya Pradesh (supra)* that, in an original suit under Article 131, the constitutionality of an enactment could not be

examined. However, as the said decision was rendered by a co-ordinate Bench, the Bench observed that judicial discipline demanded that the matter

should be referred for examination of the question by a Larger Bench of this Court. Basing on this judgment, it is contended that till the jurisdiction of this Court to entertain a challenge under Article 131 to the constitutionality of an enactment is decided by a Larger Bench, this Court should stay its hands. In this case, the other co-ordinate Bench of this Court, while regretting inability to agree with the observations in State of Madhya Pradesh (supra) stated its reasons, inter alia, in the following: -

¶11. We regret our inability to agree with the conclusion recorded in State of M.P. v. Union of India, that in an original suit under Article 131, the constitutionality of an enactment cannot be examined. Since the above decision is rendered by a coordinate Bench of two Judges, judicial discipline demands that we should not only refer the matter for examination of the said question by a larger Bench of this Court, but are also obliged to record broadly the reasons which compel us to disagree with the abovementioned decision.

12. The Constitution of India invests this Court with jurisdiction, both original and appellate, under various provisions of Part V, Chapter V of the Constitution. Such jurisdiction of this Court is in addition to the jurisdiction created under Article 32 of the Constitution of India for the enforcement of fundamental rights guaranteed under Part III of the Constitution.

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14. It can be seen from the language of Article 131 that the exclusive jurisdiction of this Court extends to any dispute between the Government of India and any one or more States and the disputes arising between two or more States in various possible combinations specified in the said article.

The dispute could be on a question of fact or law or fact.

12.1. In this decision, while referring to the aforesaid decisions in the State of Karnataka (supra), this Court further observed while making reference to a Larger Bench as under: -

¶16. If the question of constitutionality of a statute (either of Parliament or the State Legislature) were to be raised by a party other than the persons specified under Article 131, both this Court as well as the High Courts are competent to examine. This proposition is too well settled in our

jurisprudence for the period of last sixty years. What is more significant is that if Parliament chooses to repeal the proviso to Section 113 of the Code

of Civil Procedure, even an ordinary civil court functioning in accordance with the procedure prescribed under the Code of Civil Procedure would be

competent to examine such a question.

â€œ113. Reference to High Court.â€ Subject to such conditions and limitations as may be prescribed, any court may state a case and refer the same

for the opinion of the High Court, and the High Court may make such order thereon as it thinks fit:

Provided that where the court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of

any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of opinion that

such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that court is

subordinate or by the Supreme Court, the court shall state a case setting out its opinion and the reasons therefor, and refer the same for the opinion of

the High Court.â€ It is only the proviso of Section 113 of the Code of Civil Procedure which obliges an ordinary civil court to refer the same for the

opinion of the High Court. Therefore, we find it difficult to accept the statement of law enunciated by this Court in *State of M.P. v. Union of India*.

17. We are unable to agree with the proposition that this Court cannot examine the constitutionality of a statute in exercise of its exclusive original

jurisdiction under Article 131.

18. We, therefore, deem it appropriate that the question is required to be examined by a larger Bench of this Court. We direct the Registry to place

the matter before the Hon'ble the Chief Justice of India for appropriate orders in this regard.â€

13. It is also noteworthy that the case on hand cannot be viewed as limited just to a challenge to the validity of certain provisions of the Act of 1998.

In light of earlier judgments of this Court, as referred hereinbefore, it would be open to this Court to read down or interpret the statutory provisions so

as to effectively deal with the grievance of the States of Meghalaya, Nagaland and Sikkim with the provisions of the Act of 1998, which allegedly

infringe their right to do business under Article 298(b). No doubt, if this Court is required to decide the constitutional validity of the impugned provisions of the Act of 1998, it may be necessary to await the decision of the Larger Bench, but not otherwise. Therefore, at this stage, it would be premature to non-suit the State of Meghalaya on the ground that this suit is not maintainable or to keep it on hold for all purposes, pending the decision of the Larger Bench. Significantly, the Bench in the State of Madhya Pradesh (supra) did not take note of the Larger Bench decision in State of West Bengal (supra), but having referred to the same in State of Jharkhand (supra), the Bench still deemed it appropriate to refer the matter to a Larger Bench. In the State of Karnataka (supra), this Court observed that there is a distinction between "State" and "State Government" and this distinction is evident from the language of Article 131 and, therefore, what has to be seen for the purpose of determining the applicability of that Article is whether any legal right of the State, as distinct from the State Government, is infringed.

14. In the aforesaid view of the matter, we are not inclined to accept the contentions urged by the Union of India and some of the States, including the State of Kerala, that this suit is not maintainable under Article 131 of the Constitution. Given the wide ambit of the reliefs sought herein, the State of Meghalaya is entitled to take the case forward on merits, subject to what has been stated hereinbefore, with regard to the final relief to be granted in the context of validity of the impugned provisions of the Act of 1998. As the State of Meghalaya seeks to assert its right to do business in lotteries under Article 298(b) and its executive power to do so would be subject to parliamentary legislation, viz., the Act of 1998, the grievances raised by it in that context would constitute disputes which fall squarely within the four corners of Article 131 of the Constitution.

15. For what has been discussed hereinabove, the position that emerges is that the suit of the present nature and in its present form cannot be dismissed at the threshold as not maintainable.

16. In any case, even if the decision in the Larger Bench reference is to be awaited, the question, however, would remain as to whether nothing

further could be done in the present suit until determination by Larger Bench. The answer to this question, in our view, would be in the negative for the first principles governing such a position. In this regard, a reference to the principles underlying Section 10 of the Code of Civil Procedure, 1908 shall be a reasonable guiding light.

17. By virtue of Section 10 CPC, a Court is prohibited from proceeding with trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit, of course, subject to other conditions mentioned therein. This Court has explained that the object of the prohibition contained in Section 10 CPC is to prevent the Courts of concurrent jurisdiction from simultaneously trying two parallel suits and to avoid inconsistent findings. However, this rule of procedure is held not affecting the jurisdiction of the Court to entertain and deal with the latter suit and does not create a bar to the institution of the suit. The Courts have also consistently held that Section 10 CPC does not create a bar to the passing of interlocutory orders including those of injunction. These principles are succinctly summarised by this Court in the case of *Indian Bank v. Maharashtra State Cooperative Marketing Federation Ltd.*: (1998) 5 SCC 69. Therein, this Court was, of course, considering the applicability of bar under Section 10 to summary suit under Order XXXVII of CPC but, while explaining the connotation of the expression "trial" in Section 10 CPC, observed as

under: -

"8. Therefore, the word "trial" in Section 10 will have to be interpreted and construed keeping in mind the object and nature of that provision and the prohibition to "proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit". The object of the prohibition contained in Section 10 is to prevent the courts of concurrent jurisdiction from simultaneously trying two parallel suits and also to avoid inconsistent findings on the matters in issue. The provision is in the nature of a rule of procedure and does not affect the jurisdiction of the court to entertain and deal with the latter suit nor does it create any substantive right in the matters. It is not a bar to the institution of a suit. It has been construed by the courts as not a bar to the passing of interlocutory orders such as an order for consolidation of the latter suit with

the earlier suit, or appointment of a receiver or an injunction or attachment before judgment. The course of action which the court has to follow

according to Section 10 is not to proceed with the "trial" of the suit but that does not mean that it cannot deal with the subsequent suit any more or

for any other purpose. In view of the object and nature of the provision and the fairly settled legal position with respect to passing of interlocutory

orders it has to be stated that the word "trial" in Section 10 is not used in its widest sense."

18. The above principles of law, with necessary variations, when applied to the present case, lead to the position that even if final determination of the

question of maintainability (in case the constitutional validity of the impugned provision is to be decided) may depend upon the decision of Larger

Bench, the supplemental proceedings in the present suit, particularly those relating to the prayer of interim relief, cannot be put on hold.

19. In view of the above, in the first place, we are unable to uphold the contention on behalf of the contesting defendants that the present proceedings

ought to be held as not maintainable. Secondly, even if final answer to this question is to await the decision of the Larger Bench, there is no bar to the

passing of interlocutory orders such as that of injunction. Whether an injunction is to be granted in the present case or not is a matter different and that

shall be examined at the appropriate stage.

20. Therefore, at the present stage, we leave it open for the contesting defendants to file their reply in relation to the prayer for interim relief by the

plaintiff-State, if so chosen, within four weeks from today.

21. List the matter after ensuing summer vacations.