

## Mahendra Prasad Gupta and Another Vs The State of Jharkhand and Others

**Court:** Jharkhand High Court

**Date of Decision:** Dec. 6, 2012

**Acts Referred:** Constitution of India, 1950 " Article 19(1)(g)  
Penal Code, 1860 (IPC) " Section 294A

**Hon'ble Judges:** Aparesh Kumar Singh, J

**Bench:** Single Bench

**Advocate:** Anil Kumar and Lukesh Kumar, for the Appellant;

**Final Decision:** Allowed

### Judgement

Aparesh Kumar Singh

1. Heard learned counsel for the parties. The writ petitioners have come for commanding upon the respondents not to interfere with their business

of selling of lottery tickets within the territory of State of Jharkhand, as according to them, there is no law to that effect made by the State of

Jharkhand and at the same time the Central Act i.e. Lotteries ( Regulation) Act, 1988, has not been implemented in the State of Jharkhand. The

petitioners are aggrieved as the respondents are instituting false cases against them for their activities relating to sale of lottery under the provisions

of Bihar & Bengal Public Gambling Act, 1988. Copies of such First Information Reports are annexed as Annexures- 3 & 4.

2. Learned counsel for the petitioners submits that such acts on the part of the respondents are violative of the fundamental freedom guaranteed

under Article 19 (1)(g) of the Constitution of India, which can only be restricted on the basis of a valid law on reasonable grounds.

3. Learned counsel for the petitioners has relied upon the judgment delivered by this Court earlier in similar circumstances in the case of Manish

Kumar Gupta-Vs.- The State of Jharkhand & anr. in W.P. (C) No. 6063 of 2002 vide judgment dated 16th January, 2004 (Annexure-2). The

petitioners have also represented before the respondents authority, but have not been responded to.

4. The respondents have appeared and filed their counter affidavit. One of their contentions is that the judgment relied upon by the petitioners is

judgment in personem and not judgment in rem. The respondents also submitted that the First Information Reports have been registered for

offences under the Indian Penal Code committed by the petitioners. However, the respondents have not made categorical reply in respect of the

assertion of the petitioners that the activities of selling of lottery within the State are not governed by any State Act and the respondents have not

implemented the provisions of the Central Act, 1988 in the State either. The respondents have however said that the criminal offences are being

registered under the provisions of Section 294A of the Indian Penal Code and under Bihar & Bengal Public Gambling Act since the activities

indulged by the petitioners are causing problems of law and order for administration. The various persons are being compelled to resort to begging

and to be involved in crimes due to lottery business.

5. From the submission of the parties, it appears that the issue raised in the present writ petition was earlier under consideration in W.P. (C) No.

6063 of 2002 in the case of Manish Kumar Gupta -Vs.- The State of Jharkhand & anr. and this Court took into account the stand of the

respondents while holding that the State Legislation being Bihar Ban on Lottery Act, 1993 enacted for regulation of activities relating to lottery was

declared ultra vires by the Division Bench of the Patna High Court in a judgment reported in Iqbal Chand Khurana and Another etc. etc. Vs. State

of Bihar and Others etc. etc. In the said case, the respondents had failed to show any valid law governing the regulation of activities relating to

lottery within the State of Jharkhand.

6. In the present case, also the Respondents-State have failed to come out with any categorical statement in respect of any law either State or

Central or regulation against the activities of lottery within the State and as such it appears that the respondents have also not come out with a stand

that the Central Act i.e. Lotteries ( Regulation) Act, 1988, has been implemented within the State of Jharkhand.

7. In these circumstances, there is no reason as to why unnecessarily the business of the petitioners should be banned or prohibited. However, this

writ petition is not concerned with the criminal cases instituted by the respondents in respect of the acts/offences committed under Indian Penal

Code for any other valid law. In these circumstances, the respondents are directed not to interfere with the sale of lottery tickets by the petitioners

within the State. Since this writ petition is not concerned with the criminal cases, therefore, this order will not affect the criminal trials arising out of

the F.I.Rs. registered against the petitioners, to which the petitioners may have a separate remedy available in law. The writ petition is accordingly

allowed in the aforesaid term.