

(2012) 12 JH CK 0055

Jharkhand High Court

Case No: W. P. (C) No. 5799 of 2007

Mahendra Prasad Gupta and
Another

APPELLANT

Vs

The State of Jharkhand and
Others

RESPONDENT

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.