

S. Mabu Basha, Proprietor, Bharath Lottery Agency Vs Union of India (UOI), The Secretary, Home Department, Govt. of Union Territory of Pondicherry, Inspector General of Police and Senior Superintendent of Police

Court: Madras High Court

Date of Decision: Nov. 28, 2008

Acts Referred: Constitution of India, 1950 " Article 239, 239(1)
General Clauses Act, 1897 " Section 3(23)
Lotteries (Regulation) Act, 1998 " Section 13, 13(2), 4, 5
Pondicherry General Sales Tax Act, 1967 " Section 72(7)

Hon'ble Judges: R. Banumathi, J

Bench: Single Bench

Advocate: Usha Raman, for the Appellant; T. Murugesan, Govt. Pleader, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

R. Banumathi, J.

Petitioner seeks Writ of Mandamus to quash the Government Order in G.O.Ms. No. 19, Home Department,

Pondicherry dated 26.6.1998 and Notification of the 1st Respondent in F. No. U-11030/1/97-UTL dated 26.5.1998 which is no longer

enforceable by the Respondents.

2. Brief facts which led to the filing of Writ Petitions are as follows:

(i) Government of India promulgated Ordinance No. 20 of 1997 under the nomenclature "The Lotteries (Regulation) Ordinance, 1997" for

regulating the lotteries and to provide for matters connected therewith and incidental thereto.

(ii) As per Section 5 of Lotteries (Regulation) Ordinance, 1997, a State Government may within the State prohibit the sale of tickets of a lottery

organised, conducted or promoted by any other State. Since in the above said Ordinance, the terms "State Government" has not been defined to

mean and include the Administrator appointed under Article 239 of Constitution, the matter was taken up with the Government of India for

conferment of powers of the State Government on the Lieutenant-Governor of Pondicherry, so that the provisions of the said Ordinance could be

implemented in the Union Territory of Pondicherry.

(iii) Consequent on the conferment of the powers of the State Government on the Lt. Governor, Pondicherry necessary Notification was issued in

G.O.Ms. No. 19 Home Dept. dated 26.6.1998 whereby the Lt. Governor of Pondicherry in exercise of powers conferred u/s 5 of Lotteries

(Regulation) Ordinance, 1997 read with Notification F. No. U-11030/1/97-UTL dated 26.5.1998 of Ministry of Home Affairs, New Delhi

prohibited the sale of tickets of a lottery organised, conducted or promoted by any other State within the Union territory of Pondicherry with

immediate effect.

(iv) Accordingly, Government of India, Ministry of Home Affairs has issued necessary Presidential Notification F. No. U-11030/1/97-UTL dated

26.5.1998 directing Administrator of Union Territory shall subject to the control of President, exercise powers and discharge the functions of State

Government under the provisions of Lotteries (Regulation) Ordinance, 1997 within the Union Territory. The Presidential Notification is the subject

matter of challenge in W.P. No. 221/2006.

(v) Consequent on the conferment of powers of the State Government on the Lt. General, Pondicherry necessary Notification was issued in

G.O.Ms. No. 19 Home Dept. dated 26.6.1998 which is the subject matter of challenge in W.P. No. 220/2006.

(vi) Writ Petitioner was an authorised dealer in the sale of lottery tickets in the Union Territory and was doing business in the name and style of

"Bharath Lottery Agency". Cese of the Writ Petitioner is that Respondents cannot invoke the discretion conferred on a State Government u/s 5 of

Lotteries (Regulation) Act, 1998 as the Government of Pondicherry itself had conducted lotteries. Further case of the Petitioner is that when the

Government itself had chosen to over look the ban introduced vide Notification of the Lt. Governor in G.O.Ms. No. 19 Home Dept. dated

26.6.1998, it is not open to the Government (P) to interfere with the Petitioner's right to carry on business as a seller of lottery tickets.

3. Opposing the Petitions, Respondents have filed counter stating that consequent on the order of the Government in G.O.Ms. No. 19 Home

Dept. dated 26.6.1998 prohibiting the sale of lottery tickets, Union Territory of Pondicherry has become lottery free zone. Respondents have

denied conducting of any lottery by the State Government. According to the Respondents, the Constitutional validity of Lotteries (Regulation) Act,

1998 was upheld by the Supreme Court in M/s. B.R. Enterprises Vs. State of U.P. and Others, and therefore, the relief sought for in the Writ

Petitions are not sustainable.

4. Ms. Usha Raman, learned Counsel for the Petitioner forcibly contended that Pondicherry Government conducting the lottery under the guise of

organising Pondicherry Shopping Festival. Learned Counsel for the Petitioner submitted that when the Pondicherry Government conducting the

draw, there cannot be a ban for selling the lottery tickets by the Petitioner. Main plea of the Writ Petitioner is that the draw conducted by the

Government (P) Shopping Festival contains an element of lottery and that the Government cannot seek to impose ban upon the sale of lottery

tickets by private persons.

5. Mr. T. Murugesan, learned Govt. Pleader (P) would submit that Lotteries (Regulation) Act, 1998 was duly published in the Gazette on

07.07.1998 and thereby the sale of lotteries within the Union Territory of Pondicherry is prohibited. Learned Govt. Pleader (P) further submitted

that pursuant to the Presidential Notification, Lt. Governor has powers to issue necessary Notification in G.O.Ms. No. 19 Home Dept. dated

26.6.1998 and the same cannot be challenged.

6. As pointed out earlier, consequent on the conferment of powers of the State Government on the Lt. Governor, Pondicherry, necessary

Notification was issued in G.O.Ms. No. 19 Home Dept. dated 26.6.1998 whereby the Lt. Governor, Pondicherry in exercise of powers u/s 5 of

Lotteries (Regulation) Act, 1998 read with Presidential Notification F. No. U-11030/1/97-UTL dated 26.5.1998 prohibited the sale of tickets of

a lottery organised, conducted or promoted by any other State within the Union Territory of Pondicherry with immediate effect.

7. Lotteries (Regulation) Act, 1998 (Act No. 17 of 1998) was enacted by the Parliament repealing the Lotteries (Regulation) Ordinance, 1997

and Sub-section (2) of Section 13 of the said Act stipulates that "Notwithstanding such repeals, anything done or any action taken under the said

Ordinance, shall be deemed to have been done or taken under the corresponding provisions of the said Act. With the passing of the Lotteries

(Regulation) Act, 1998 and by virtue of the saving Clause (Section 13) contained in the said Act, all acts done and executed under the Ordinance

are deemed to have been acts done under the Act. Therefore, the order of the Lt. Governor, Pondicherry imposing the ban on sale of lottery

tickets in the Union Territory of Pondicherry is valid and continuing and anybody acting in violation of the said ban imposed in exercise of powers

u/s 5 of the said Act is committing an offence punishable under the said law.

8. Some of the sellers of lottery tickets in Pondicherry have filed batch of Writ Petitions challenging the validity of Notification and the High Court,

Madras stayed the operation of the said G.O.Ms. No. 19 Home Dept. dated 26.6.1998 pending disposal of the Writ Petitions. In the mean while,

Supreme Court of India seized up the matter by way of challenge as to the vires of the Lotteries (Regulation) Act, 1998 in M/s. B.R. Enterprises

Vs. State of U.P. and Others, . Wherein, the Supreme Court upheld the Constitutional validity of Lotteries (Regulation) Act, 1998. Based upon

the Judgment of the Supreme Court in B.R. Enterprises case High Court dismissed W.P. Nos. 8810, 8811/1998 and other Writ Petitions. While

dismissing the batch of Writ Petitions, First Bench of this Court has clearly found that the impugned Notification in G.O.Ms. No. 19 Home Dept.

dated 26.6.1998 satisfied the dicta laid down by the Supreme Court. Therefore, the ban imposed by the said G.O.Ms. No. 19 Home Dept. dated

26.6.1998 has become final and the same cannot be challenged.

9. In another batch of Writ Petitions, W.P. Nos. 32247 & 39715/2002 challenge was levy of sales tax in accordance with Section 72(7) of

Pondicherry General Sales Tax Act on the sale of lottery tickets vide G.O.Ms. No. 35/2001/F2 dated 01.10.2001. In the said Writ Petitions,

G.O.Ms. No. 19 Home Dept. dated 26.6.1998 was also inter alia challenged. While dismissing the batch of Writ Petitions, High Court has

observed that "the ban imposed by the impugned Notification No. 19 of 1998 dated 26.6.1998 on the sale and conduct of lottery shall stand". As

against the order of the High Court dated 23.12.2003, SLP was filed in Supreme Court and the same was also dismissed confirming the Judgment

of the High Court.

10. Consequent on the passing of G.O.Ms. No. 19 Home Dept. dated 26.6.1998, prohibiting the sale of lottery tickets, the Union Territory of

Pondicherry has become a lottery free zone

11. Pondicherry State Lottery Agents and Sellers Assn. has filed O.S. No. 249/2005 on the file of Prl. Sub-Court, Pondicherry for declaration

that the Circular No. 1/SSP (L & O)/2002-236 dated 18.10.2002 issued by the Senior Superintendent of Police, Pondicherry is without

jurisdiction and against Section 5 of Lotteries (Regulation) Act, 1998 and to restrain the Respondents 3 and 4 from interfering with the sale of

lottery tickets. Resisting the said suit, Government of Pondicherry has filed Written Statement.

12. Drawing court's attention to certain averments in the Written Statement filed in O.S. No. 249/2005, learned Counsel for the Writ Petitioner

contended that in Para-13 of the Written Statement, Government of Pondicherry have clearly averred about conducting of lottery by Government

of Pondicherry in Pondicherry Shopping Festival. Main contention of the Petitioner is that when the Government is conducting the draw, Petitioner

cannot be prevented from selling the lottery tickets.

13. Learned Govt. Pleader (P) has submitted that draw is conducted by the Government of Pondicherry in Pondicherry Shopping Festival. It was

submitted that Government of Pondicherry have taken various efforts to develop tourism at Pondicherry State and to promote tourism,

Government have conducted Shopping Festival. It was further stated that in association with the Dept. of Tourism, Festival Committee conducted

the alleged draw by following the conditions stipulated u/s 4 of the Act. Conducting of Pondicherry Shopping Festival and the draw cannot be said

to be in contravention of the provisions of Lotteries (Regulation) Act, 1998. It is to be noted that Lottery Selling Agents like Writ Petitioner would

sell the lottery tickets for consideration/money. Whereas, in the draw conducted by the Pondicherry Shopping Festival, entry is not by purchase of

ticket by paying consideration. Petitioner is not right in contending that during Pondicherry Shopping Festival, Government had conducted the draw

in contravention of provisions of Lotteries (Regulation) Act, 1998.

14. Learned Counsel for the Petitioner contended that as per Statute, President cannot direct the Lt. Governor by way of impugned Notification to

exercise powers of the State Government in terms of Section 5 of Lotteries (Regulation) Act insofar as Union Territory of Pondicherry is

concerned.

15. Lotteries (Regulation) Ordinance, 1997 or the Lotteries (Regulation) Act, 1998 (Act 17/98) does not contain a specific provision to provide

for delegation of powers of the State Government to the Administrator of the Union Territories. However, in the General Clauses Act, 1897, the

State Government in relation to a Union Territory means the Central Government. Section 3(23) of General Clauses Act, 1897 defines

"Government" or "The Government" as shall include both the Central Government and any State Government.

16. Central Government can delegate its powers to the Administrators of all the Union Territories, appointed under Article 239(1) of Constitution

so that the Administrator may exercise the powers under the Ordinance/Act in respect of the concerned Union Territory. In view of the above

position, Central Government notified S.O. No. 457 (E) dated 26.5.1998 which states that the Administrator of a Union Territory shall subject to

the control of the President and until further orders, exercise the powers and discharge the functions of a State Government under the provisions of

the Lotteries (Regulation) Ordinance, 1997 (Order 6/98) within the Union Territory. Therefore, Petitioner is not right in contending that the

impugned Notification as far as Union Territory is concerned is violative of law laid down by the Supreme Court.

17. Presidential Notification F. No. U-11030/1/97-UTL dated 26.5.1998 and G.O.Ms. No. 19 Home Dept. dated 26.6.1998 are well within the

Legislative powers and their validity cannot be challenged. When the Constitutional validity of Lotteries (Regulation) Act, 1998 has been upheld by

the Supreme Court, the Writ Petitioner cannot successfully challenge the said Presidential Notification and the Government Order in

G.O.Ms.No.19 Home Dept. dated 26.6.1998.

18. In the result, the Writ Petitions are dismissed.