

(1996) 10 MAD CK 0072

Madras High Court

Case No: None

Maruthi Agencies

APPELLANT

Vs

The State of Tamil
Nadu and Others

RESPONDENT

Date of Decision: Oct. 15, 1996

Acts Referred:

- Tamil Nadu General Sales Tax Act, 1959 - Section 7C

Citation: (1997) 1 MLJ 589

Hon'ble Judges: K.A. Swami, C.J

Bench: Division Bench

Judgement

K.A. Swami, C.J.

Write Appeal No. 631 of 1996 is preferred against the interim order dated 8.7.1996 passed by the learned single

Judge in W.M.P. No. 13110 of 1995 filed in W.P. No. 8180 of 1995. When the appeal came up for admission, after hearing both sides, we

considered it necessary to hear the writ petition along with the writ appeal, as the arguments in the writ appeal and the writ petition are the same.

Accordingly, we directed all the Writ Petition Nos.8046 of 1995, 8079 of 1995 and 8180 of 1995 to be posted for hearing along with the writ

appeal. Accordingly, we have heard both the sides in the writ appeal and the Writ petitions.

2. W.P. No. 8079 of 1996 is filed by the Manipur State, whereas Writ Petition Nos. 8046 of 1995 and 8180 of 1995 of 1995 are filed by the

respective Agents of the Mizoram and Nagaland States, who have been authorised by those States to sell their lottery tickets.

3. In the writ petitions, the petitioners have sought for quashing the order dated 2.6.1995 passed by the State Government in G.O.Ms. No. 819,

Home (Courts-II) Department. By the impugned order, the State Government has banned the sale of single digit and instant lotteries by the said

three State Governments in the State of Tamil Nadu. The impugned order, G.O.Ms. No. 819, dated 2.6.1995 reads as follows:

Raffles - Sale of single digit and Instant Lotteries of other State Government in Tamil Nadu Ban orders - Issued.

HOME (COURT II) DEPARTMENT

G.O.Ms. No. 819

Dated 2.6.1995

1. G.O.Ms. No. 1101, Finance (Raffles) Department, dated 6.10.1989.
2. G.O.Ms.No. 634, Home (Courts II) Department, dated 8.6.1994.
3. G.O.Ms. No. 1176, Home, dated 31.10. 1994.
4. G.O.Ms. No. 1446, Home, dated 25.11.1994.
5. G.O.Ms. No. 101, Home, dated 25.1.1995.
6. G.O.Ms. No. 1333, Home, dated 7.11.1994.
7. G.O.Ms. No. 1370, Home, dated 12.11.1994.
8. From the Director of Raffles, Madras, D.O. Letter No. C2/4959/93, dated 11.2.1995.

ORDER: In the Government Order first read above, orders have been issued regulating the sale of lottery tickets in the State of Tamil Nadu

according to which private lotteries of any kin were not allowed to be sold in this State. The above orders of this Government were challenged in

the Supreme Court of India by certain States such as Mizoram, Nagaland, Sikkim, Arunachal Pradesh and ""Goa and certain other lottery agent.

The Supreme Court by its interim order dated 21.4.1994 laid down certain essential concomitants to be satisfied for a ""State organised Lottery

for the purpose of being sold in other States such as the lottery tickets must be printed by the State Government so as to ensure authenticity and

genuineness and also in order to avoid the possibility of duplication of such tickets that the State itself must be able to sell the tickets though, if

necessary, through a sole distributor or selling agent or several agents or distributors under the terms and conditions of any agency to be

determined by an agreement between the parties etc. In view of the above interim orders of the Supreme Court this Government in the

Government order 2nd read above ordered that the lottery tickets of the Government of Tamil Nadu, West Bengal, Kerala, Uttar Pradesh,

Maharashtra and Kamataka which satisfy the basis and essential concomitants laid down by the Supreme Court be permitted for sale within the

State of Tamil Nadu and that the other State Governments which intend to have their lottery tickets sold in this State shall make an application in

the prescribed format to the Secretary to Government, Home Department, Government of Tamil Nadu so as to verify whether those lotteries

conform to the norms prescribed by the interim order of the Supreme Court with reference to the applications made by the Government of

Mizoram, Arunachal Pradesh, Sikkim, Manipur and Nagaland, the lottery tickets of these States were also permitted to be sold in Tamil Nadu in

October, 1994 and subsequent thereof.

4. In February, 1995 the Director of Raffles, Tamil Nadu brought to the notice of this Government that certain States have floated single digit

lotteries in Tamil Nadu which has paved the way for gambling and made lottery ticket buyers addicted to the single digit lottery tickets which ruins

many of the families that are already downtrodden. The Director has also drawn attention of the Government in respect of certain reports that

appeared in the press delineating the harmful effects of the single digit lottery on the already slender resources of the poor and sought instructions for

banning the sale of such single digit lottery in the State of Tamil Nadu.

5. The Government has examined the issue carefully. Duly taking into account the deleterious effects on the people of the sale of single digit and

instant lotteries by the other State Governments in the State of Tamil Nadu and considering the various complaints that have come to the

Government notice regarding the sale of single digit and instant lotteries and inasmuch as these type of lotteries are purely a form of betting and

gambling and as such they do not conform to the essential concomitants laid down by the Supreme Court of India in their interim order, dated

21.4.1994, the Government direct that the permission accorded earlier for the sale of lottery tickets of State Governments in Tamil Nadu will not

cover the sale of single digit and instant lotteries of these States in the State of Tamil Nadu. The Government, therefore, order that the sale of

single digit and instant lotteries of any kind is not permitted in the State of Tamil Nadu with immediate effect.

6. The case of the petitioners is that all the three States in question, namely, Mizoram, Manipur and Nagaland have organized the lotteries and the

petitioners in Writ Petition Nos. 8046 and 8180 of 1995 are the agents appointed by the States of Mizoram and Nagaland to sell the lottery

tickets in the State of Tamil Nadu and remit the amount to the respective State Treasuries, that the lottery tickets are printed by the State Government

at its own costs sufficiently in advance with logo/emblem of the State, that the lottery tickets are sold through the sole distributors appointed by the

State on condition that the sale proceeds of the tickets shall be credited to the funds of the State Government; that the draw for selecting prize

winning tickets are conducted by the State itself irrespective of the prize money; that the unclaimed prize money recovery to the State and become

the property of the State; Thus it is the case of the petitioners that the instant lotteries in question satisfy all the concomitants laid down by the

Supreme Court in State of Haryana Vs. Suman Enterprises and Others, . In the said decision, the Supreme Court has laid down the following

concomitants to prima facie show that the lotteries are organised by the State:

...In the present case we have examined, prima facie, whether the lottery claimed to have been organised" by the State of Sikkim can be said to be

a lottery ""organised" by the State of Sikkim and not merely authorised by it authorising the so-called ""Agents" themselves to organise the lottery.

We have examined this in the context of the question whether the earlier interim order granted by this Court should continue or not till the final

disposal of the main cases. Prima facie, it appears to us that the concept of a lottery ""organised" by a State would require certain basic and

essential concomitants to be satisfied as, indeed, members of the public when investing their money in such a lottery proceed on a trust and on

certain assumptions as to the genuineness, bona fides, safety, security, the rectitude of administration etc. associated with governmental functioning.

If some of the basic functions characterising a State-organised lottery are delegated or abdicated by the State this public trust is impaired. The first

of those requirements is that the tickets which bear the imprint and logo of the State must be printed by or directly at the instance of the State

Government so as to ensure their authenticity and genuineness and further to ensure that any possibility or duplication of the tickets and sale of fake

tickets is provided against and rendered impossible. Secondly, the State itself must sell the tickets though, if it thinks necessary or proper so to do,

through a sole distributor or selling agent or several agents or distributors under terms and conditions regulated by the agreement reached between

the parties. The sale proceeds the tickets either sold in retail or wholesale shall be credited to the funds of the Government. Thirdly, the draws for

selecting the prize-winning tickets must be conducted by the State itself, irrespective of the size of the prize money. Fourthly, if any prize money is

unclaimed or is otherwise not distributed by way of prize, it must revert to and become the property of the State Government. These, prima facie,

appear to us to be the minimal characteristics of a lottery which can claim to be ""organised" by the State.

7. In fact, based upon the aforesaid decision of the Supreme Court, the Government of Tamil Nadu permitted Mizoram, Sikkim, Nagaland and

Manipur States to sell the lotteries organised by those States in Tamil Nadu. The Government Orders issued in respect of the aforesaid four States

are dated 3.10.1994, 12.11.1994", 25.11.1994 and 25.1.1995 relating to Mizoram, Sikkim, Nagaland and Manipur respectively. We are now

concerned only with the permission granted to the State Governments of Mizoram, Nagaland and Manipur. The Order dated 3.10.1994, which

relates to the State of Mizoram is produced at page 21 of the typed set of papers. After referring to the order of the Supreme Court referred to

above and on considering the application filed by the Mizoram State in the prescribed form for permission to sell their lottery tickets, the State of

Tamil Nadu has permitted the Mizoram State Government to sell their lottery tickets in the following terms:

The Government after careful consideration have decided to accept the request and they accordingly permit the sale of lottery tickets of the

Government of Mizoram in Tamil Nadu.

8. The State of Nagaland has been granted permission under G.O.Ms. No. 1446, dated 25.11.1994 in the following terms:

The Government after careful consideration have decided to accept the request and they accordingly permit the sale of lottery tickets of the

Government of Nagaland in Tamil Nadu, subject to the condition that the case of default in the payment of sales tax on Lottery tickets by their

distributors, it shall be the responsibility of the Government of Nagaland to remit the sales tax amount to the Government of Tamil Nadu.

9. Similarly, the State of Manipur has been granted permission by G.O.Ms. No. 101, dated 25.1.1995, in the following terms:

The Government after careful consideration have decided to accept the request and they accordingly permit the sale of lottery tickets of the

Government of Manipur in Tamil Nadu, subject to the condition that in case of default in the, payment of sales tax on Lottery Tickets by their

distributors, it shall be the responsibility of the Government of Manipur to remit the sales tax amount to the Government of Tamil Nadu.

10. However, the impugned order came to be issued on the ground that these three States have been conducting single digit and instant lotteries

and it is causing great harm to the public, especially to the poor. In respect of the single digit and instant lotteries conducted by the three States in

question, it has been stated thus:

In February, 1995 the Director of Raffles, Tamil Nadu brought to the notice of this Government that certain States have floated single digit lotteries

in Tamil Nadu which has paved the way for gambling and made lottery ticket buyers addicted to the single digit lottery which ruins many of the

families that are already downtrodden. The Director has also drawn the attention of the Government in respect of certain reports that appeared in

the press delineating the harmful effects of the Single Digit Lottery on the already slender resources of the poor and sought instruction for banning

the sale of such single digit lottery in the State of Tamil Nadu.

11. At a certain stage, there was a doubt expressed by the State Government as to whether the lotteries conducted in the name of the States of

Mizoram, Nagaland and Manipur were at all organised by those State Governments. Now, no doubt is left on that issue by reason of the affidavits

filed by the Finance Secretary to the Government of Mizoram by name Sri Haukhum Hauzel, in which he has stated as follows:

6. As can be seen from the terms of the agreement, all the essential characteristics of a lottery organised by a State, as laid down in the order of

Supreme Court are satisfied and it is for this reason that on a perusal of the agreement and other connected papers, the Government of Tamil

Nadu recognised the lotteries organised by the Government of Mizoram as ""State organised Lottery"" in terms of the order of the Supreme Court

and this was done by G.O.Ms. No. 1176, Home (Courts II) Department dated 3.10.1994.

7. The Government of Mizoram firmly reiterates that all the conditions stipulated by the Supreme Court in its order dated 21.4.94 as well as the

terms and conditions of the agreement dated 27.5.94 are being strictly adhered to and are being scrupulously followed even on date. Though the

agreement was initially effective from 1.7.1994 to 30.6.1995, the validity of the agreement has been extended to 31.8.1996. The Government of

Mizoram has called for fresh tenders from intending distributors and the tenders are due to be opened on 12.8.1996. The tickets are printed on the

orders of the Government of Mizoram and in conformity of the guidelines set out by the Supreme Court and samples of print orders are annexed to

this affidavit. The draws are also held by the Government of Mizoram and samples of the result given under the signature and seal of the

Government of Mizoram, as well as the gazetted copies of the results are enclosed as annexures to this affidavit.

8. All unclaimed prize money is reverting back to the Government to Mizoram and all sale proceeds are credited to the State Funds, as per Clause

6 of the agreement. It is, therefore, submitted that all the essential characteristics of a lottery organised by a State are satisfied in the instant case.

9. At the time when the Government of Mizoram applied in the prescribed pro forma to the Government of Tamil Nadu, it mentioned the names of

only some of the particular draws that were being conducted at the time when the application was made. At that time the Government of Mizoram

was not conducting any instant lottery and it was only later that the Government started conducting instant lotteries. No separate permission was

necessary from the Government of Tamil Nadu since the instant lottery is also a lottery which is organised by the Government of Mizoram and,

therefore, outside the purview of the Legislative or executive power of the State of Tamil Nadu.

10. The Government of Tamil Nadu passed the impugned order on 2.6.1995 banning the sale of instant and single digit lottery and at that time,

after discussion between the Government of Mizoram and its distributor, the petitioner herein, the Government of Mizoram was advised that the

distributor could initiate appropriate proceedings before this Hon"ble Court by filing a writ petition to challenge the impugned order. The

Government of Mizoram agreed to this course of action and it is in these circumstances that the distributor has filed the present writ petition. The

distributor has kept the Government of Mizoram informed at all stages of the proceedings since the Government of Mizoram is vitally interested in

the outcome of the writ interested in the outcome of the writ petition. In fact, the revenues of the Government of Mizoram will be affected if the writ

petition is dismissed. 11.1 submit that the Government of Mizoram is organising lotteries including instant lotteries and all these lotteries satisfy the

essential characteristics of a lottery organised by a State Government as set out in the order of the Supreme Court. The Government of Mizoram

reiterates that it fully supports the case of the petitioner and accordingly prays that this Hon"ble Court may be pleased to allow the above writ

petition and pass such further or other orders as may be deemed fit and proper.

12. Similarly, in the affidavit of Additional Secretary (Finance), Government of Nagaland by name Sri A. Dogra, it has been specifically stated thus:

6. As can be seen from the terms of the agreement, all the essential characteristics of a lottery organised by a State, as laid down in the order of

the. Supreme Court are satisfied and it is for this reason that on a perusal of the agreement and other connected papers, the Government of

Nagaland as ""State organised Lottery"" in terms of the order of the Supreme Court and this was done by G.O.Ms. No. 1446 Home (Courts - II)

Department dated 25.11.1994.

7. The Government of Nagaland firmly reiterates that all the conditions stipulated by the Supreme Court in its order dated 21.4.94 as well as the

term and conditions of the agreement dated 5.5.1994 are being strictly adhered to and are being scrupulously followed even on date. The

agreement is valid for a period 5 years. The tickets are printed on the orders of the Government of Nagaland and in conformity of the guidelines set

out by the Supreme Court and samples of print orders are annexed to this affidavit. The draws are also held by the Government of Nagaland and

samples of the results given under the signature and seal of the Government of Nagaland, as well as the gazetted copies of the results are enclosed

as annexures to this affidavit.

8. All unclaimed prize money is reverting back to the Government of Nagaland and all sale proceeds are credited to the State Funds, as per

Clauses 7 and 8 of the agreement. It is, therefore, submitted that all the essential characteristics of a lottery organised by a State are satisfied in the

instant case.

9. At the time when the Government of Nagaland applied in the prescribed pro forma to the Government of Tamil Nadu, it mentioned the names of

only some of the particular draws that were being conducted at the time when the application was made. Clause 5 of the Agreement contemplated

instant lotteries. No separate permission was necessary from the Government of Tamil Nadu since the instant lottery is also a lottery which is

organised by the Government of Nagaland and, therefore, outside the purview of the legislative or executive power of the State of Tamil Nadu.

10. The Government of Tamil Nadu passed the impugned order on 2.6.1995 banning the sale of instant and single digit lottery and at that time,

after discussion between the Government of Nagaland and its distributor, the Government of Nagaland was advised that any sub-distributor could

initiate appropriate proceedings before this Hon"ble Court by filing a writ petition to challenge the impugned order. The Government of Nagaland

agreed to this course of action and it is in these circumstances that the Sub-distributor has filed the present writ petition. The Sub distributor has

kept the Government of Nagaland informed at all stages of the proceedings since the Government of Nagaland is vitally interested in the outcome

of the writ petition. In fact, the revenues of the Government of Nagaland will be effected if the writ petition is dismissed

13. As far as Manipur is concerned, the writ petition itself is by the Government of Manipur represented by its Joint Director, Lottery, Imphal.

Even then, the Joint Director has filed the affidavit in which he has specifically stated thus:

12. As stated above, after the order of the Supreme Court dated 21.4.1994, the Government of Manipur decided to organise its own lottery and

for the purposes of distribution, it had also appointed Sole Distributor in respect of Manipur State Lottery. Thereafter, the Government of Manipur

made an application on 18.6.1994 and 11.10.1994 to the State Government for permission to sell their lottery tickets in Tamil Nadu and on a

careful consideration of the facts and circumstances and the entire scheme of the lottery organised by the Government of Manipur, the respondent

issued G.O.Ms. No. 101, Home (Courts-II) Department dated 25.1.1995 by which the Government decided to accept the request of the

Government of Manipur and accordingly permit the sale of lottery tickets of Government of Manipur in Tamil Nadu. Thereafter the Government

has also granted permission for the sale of Nagaland Lottery tickets, Sikkim Lottery tickets, Mizoram lottery tickets etc.

13. The Government of Manipur also organises an instant lottery. Under this scheme, at the time of printing of the lottery tickets, the draw itself is

held and the numbers of the prize winning tickets are announced. However when the tickets are printed the number of the ticket is covered and if a

person purchase a ticket, by scratching on the face of the ticket where the number is printed the ticket number will become visible. In this manner,

the person who purchases the lottery ticket is in a position to immediately find out whether he has won any prize. This type of lottery is known as

an instant lottery because a purchaser of the ticket instantly knows whether he has won the prize. Though it is an instant lottery, it satisfied all the

basic and essential features of a lottery organised by a State Government, as stipulated in the order of the Supreme Court.

14. All of a sudden, without any notice to any of the State Governments or to their agent, the Government issued G.O.Ms. No. 819 Home

(Courts-II) Department dated 2.6.1995 which the respondent referred to a letter issued by the Director of Raffle of Tamil Nadu Government

brought to the notice of the Government that certain States had floated single digit lotteries which have paved the way for gambling and made

lottery ticket buyers addicted to single digit lottery which ruins many of the families that are already downtrodden. The Director of Raffles drew

attention of the Government in respect of certain reports that appeared in the press regarding the harmful effects of single digit lottery on the

already slender resources of the poor and sought instructions for banning the sale of such single digit lotteries in the State of Tamil Nadu.

...

16.(C) It is further submitted that it is not the case of the respondent in the impugned order that the instant lotteries which are being conducted by

the Government of Manipur are not lotteries which are organised by a State Government. In other words, the Government of Tamil Nadu is aware

of the fact, and is proceeding on the basis that the instant lottery is also a lottery which is organised by the State Government of Manipur.

However, in an apparent attempt to over-reach the orders of the Supreme Court, the Government of Tamil Nadu is now seeking to imply that an

instant lottery is a form of betting and gambling and may therefore would come within Entry 34 of List II. While all lotteries may be a form of

betting and gambling, if looked at from a common sense point of view, inasmuch as Entry 40, specifically enumerates a particular type of betting

and gambling namely lotteries organised by the Central Government or by a State Government it would not fall within Entry 34 of List II and hence

the State Government would not have the power to regulate or ban such lotteries. Inasmuch as the State Government has, in the impugned order,

not stated that the instant lottery is not a lottery which is organised by the State of Manipur, is submitted that the, State Government would not

have the power or competence to ban the said lottery.

...

(F) It is further submitted that a perusal of the impugned order would show that it suffers from total non-application of mind. The letter written by

the Director of Raffles on 11.2.1995 only talks about single digit lotteries and states that these single digit lotteries have paved the way for

gambling. However, single digit lotteries are not run in Tamil Nadu any longer and in any event, this writ petition is not concerned with single digit

lotteries but only with instant lotteries. From paragraph 2 of the impugned order, it is clear that the letter of the Director of Raffles dated 11.2.1995

docs not in any way talk of any deleterious effect of instant lotteries but only talks about single digit lotteries where the prize is based on the last digit

of the lottery ticket. There was absolutely no material before the Government to show that instant lotteries had any adverse impact on the people

or on public. While the material placed before the Government was only in relation to single digit lotteries, the action of the Government in banning

instant lotteries also is arbitrary, illegal and violative of Article 14 of the Constitution.

14. We must also point out here that it is one of the contentions of the petitioners that no separate permission is required for conducting instant and

single digit lotteries, that the necessary permission granted by the State of Tamil Nadu to run the lotteries would also include instant lottery and

single digit lottery organised by the Government and, therefore, it is outside the purview of the legislative or executive power of the State of Tamil

Nadu to interfere with sale of lottery tickets of the lotteries organised by the States of Manipur, Mizoram and Nagaland. It is further contended that

the Government of Tamil Nadu has also levied sales tax on instant lotteries and the sales tax is also promptly paid on instant lotteries and other

lotteries. The State of Tamil Nadu has introduced Section 7-C by amending the Tamil Nadu General Sales Tax Act to levy sales tax on the sale of

instant lottery tickets. As such, the Tamil Nadu State Government was aware of the instant lottery scheme. Thus, it is the case of the petitioners

that the instant lottery also falls within the permission granted to them.

15. The State Government has filed a counter affidavit to the supporting affidavits filed by the Secretaries of the Governments of Mizoram,

Manipur and Nagaland. The counter affidavit has been sworn to by one Sri M. Manikandamoorthy, Deputy Secretary to Government, Home

Department, in which it has been stated that a certificate from the Accountant General of the respective States to the effect that the cost of printing

charges of unsold raffle tickets that were destroyed had been got ratified by the Government is necessary and it must be produced, that no

documentary evidence to the effect that all unclaimed prize money is reverting back to Government and all sale proceeds are credited to the Fund

of the State, is produced, that no certificate is produced to show that the tickets once sold to the distributors or agents on obtaining the face value

of the cost are not taken back and no evidence is produced to show that the sole distributors are surrendering the winning tickets to the

Government and get them reimbursed. It has been further stated that the Government of Tamil Nadu, while banning the single digit and instant

lotteries, have clearly explained that the permission already given to the North Eastern State for selling their tickets will not cover the sale of single

digit lottery and instant lottery. It has also been further stated that more than 120 instant lottery tickets are on sale, consequent on the stay of the

High Court.

16. We need not consider the submissions regarding the single digit lottery, because it is submitted by the learned Counsel appearing for the writ

petitioners that no single digit lottery is being conducted. Therefore, we have to consider only whether the instant lottery, which was not being

conducted at the time when the permission was granted by the Tamil Nadu State Government to all the petitioners, can be considered to fall within

the permission granted by the Tamil Nadu State Government.

17. The contention of the then learned Advocate General Mr. R. Krishnamurthy is that for each series of the lotteries, necessary permission is

required to be obtained, as otherwise it would not be possible to know whether the new series are organised Or authorised by the State, whether

the lottery tickets preprinted by the concerned States and whether all the concomitants of the States organised lotteries as laid down by the

Supreme Court in the decision State of Haryana Vs. Suman Enterprises and Others, are satisfied. The contention of the petitioners is that instant

lottery is also a lottery which falls within Entry 40 of List I of the Seventh Schedule of the Constitution and, therefore, the State Government has no

power to ban the instant lottery, and no permission is required to be obtained from the State for selling the lottery tickets of States organised lottery

in that State, as every State is en-titled to organise the State lotteries and sell, the tickets of such lotteries in another State.

18. In the light of the rival contentions, the following points arise for consideration:

1. Whether the instant lottery can be said to have been organised or authorised by the States of Mizoram, Manipur and Nagaland?

2. Whether it was necessary for the aforesaid three States to apply to the State of Tamil Nadu before organising new series of lotteries and obtain

permission.

3. Whether the impugned order is liable to be interfered with?

19. Point No. 1: Entry 40 of List I and Entry 34 of List III of the Seventh Schedule to the Constitution are to be read together. A reading of these

two entries together makes it clear that in the absence of the law enacted by the Parliament on the subject viz., the lotteries organised by the

Government of India or the Government of the States the State Government cannot prohibit the sale of lottery tickets organised by other States. Of

course, it can prohibit the sale of lottery tickets of the lotteries authorised, but not organised by other States. It is true the expression "betting and

gambling" contained in Entry 34 of List 2 of the Seventh Schedule has been always understood and construed as to include the conduct of

lotteries. The fact that the expression ""betting and gambling"" includes lotteries does not enable or empower either the State Legislature or the State

executive to ban the sale of lottery tickets of the lotteries organised by the Government of India or the Government of the States. Such lotteries are

taken out of the purview of the State Legislature and are vested in the Parliament as is evident from Entry 40 of List I of the Seventh schedule. This

question came up for consideration before the Supreme Court in H. Anraj and Others Vs. State of Maharashtra, Entry 34 of List II and Entry 40

of List I of the Seventh Schedule to the Constitution have been considered and held as follows:

...Entry 40 of List I of the VIIth Schedule to the Constitution is ""Lotteries organised by the Government of India or the Government of a ""State"".

Entry 34 of List II of VIIth Schedule is ""Betting and gambling"". There is no dispute before us that the expression ""Betting and gambling"" included

and has always been understood to have included the conduct of lotteries. Quite obviously, the subject Lotteries organised by the Government of

India or the Government of a State" has been taken out from the legislative field comprised by the expression ""Betting and Gambling"" and is

reserved to be dealt with by Parliament. Since the subject "Lotteries organised by the Government of India or the Government of a State" has

been made subject within the exclusive legislative competence of Parliament, it must follow, in view of Article 246(1) and (3) that no legislature of a

State can make a law touching lotteries organised by the Government of India or the Government of a State. This much is beyond controversy and

the Maharashtra legislature has acknowledged the position, as indeed it must, in Section 32 of the Bombay Lotteries (Control and Tax) and Prize

Competitions (Tax) Act, 1958. It is an Act to control and tax lotteries and to tax prize competitions in the State of Maharashtra. Section 32(b)

expressly provides that nothing in the Act shall apply to ""a lottery organised by the Central Government or a State Government"", This, as we said,

is but a recognition of the prevailing situation under the Constitution. The Constitutional position cannot be altered by an act of the State

legislature....

...

Reading and considering Articles 73 and 298 together, as they should indeed be read and considered, it is clear that the executive power of a

State in the matter of carrying on any trade or business with respect to which the State legislature may not make laws is subject to legislation by

Parliament but is not subject to the executive power of the Union. That is why we mentioned earlier that the Government of a State is not required

to obtain the permission of the Union Government in order to organise its lotteries, in the absence of Parliamentary legislation. Even assuming that

such permission is necessary, we do not know a condition imposed by such permission that lottery tickets of one State may not be sold in another

State may be enforced by the other State. The other State has no power to make laws in regard to the lotteries organised by the first state. Its

executive power, by virtue of Article 298, extend to lotteries organised by itself but not to lotteries organised by the other state....

The matter again came up for consideration in J.K. Bharati Vs. State of Maharashtra and Others, and it was held thus:

...In H. Anraj and Others Vs. State of Maharashtra, we held that the subject ""Lotteries organised by the Government of India or the Government

of State"" had been taken out from the legislative field, comprised by the expression ""Betting and gambling"" in Entry 34 of List II of Schedule VII

and was reserved to be dealt with by Parliament under Entry 40 of List I of Schedule VII. Even so, we held, Article 208 of the Constitution left the

Government of a State free to carry on any trade or business in respect of which it may not have the power to make laws, but that the power to

carry on such trade or business shall be subject to legislation by Parliament. Therefore, we said, in the absence of Parliament legislation, the

Government of every State had the unrestricted right to organise lotteries and this right was not subject to the executive power of the Government

of India or the executive and legislative powers of other States. Consequently we held that the Government of Maharashtra did not have the right

to impose a ban on the sale and distribution of tickets of lotteries organised by other States in the State of Maharashtra. In the instant cases, we are

concerned not with the ban on lotteries organised by the Governments of other States but with the ban on lotteries authorised by such

Governments and organised by institutions and persons other than the Government. The source of power is not in question. It is to be found in

Entry 34 of List II of Schedule VII which empowers the State legislature to make laws in respect of ""Betting and Gambling,"" which expression has

always been held to include the conduct of lotteries. While lotteries organised by the Government of India or the Government of a State have been

taken out of Entry 34 of List II of Schedule VII by Entry 40 of List I, there is no question about the competence of the Legislature of Maharashtra

to legislate in respect of the sale or distribution, in the State of Maharashtra, of tickets of all lotteries organised by any agency, whatsoever other

than the Government of India or the Government of a State....

Therefore, it follows that as long as the lotteries are organised by another State, the sale of tickets of such lotteries cannot be prohibited in other

States.

20. The next question for consideration is as to whether the instant lotteries can be considered as a ""lottery"" because it is the contention of the

Government of Tamil Nadu that it is in the nature of ""gambling", therefore, it falls under Entry 34 of List II of the Seventh Schedule to the

Constitution. Hence, the State Government is entitled to ban the sale of the instant lottery tickets even though organised by other States. It is not

possible to accept this contention. The word ""lottery" is not defined either in the Code of Criminal Procedure or in any other Statute. The word

"lottery" denotes a distribution of prizes by lot or chance without the use of skill. The law lexicon defines ""lottery" on the basis of the decision of the

High Court of Lahore in *Impero v. Gurubaksh Singh* AIR 1934 Lah 840, thus:

The word ""lottery"" is nowhere defined in the Criminal Procedure Code, or in any other statute. Its common meaning, as disclosed by the

dictionary is "a scheme for the distribution of prizes by lot or chance.

It is also further stated therein that,

In law, the word embraces all schemes for the distribution of prizes by chance, such as policy playing gift exhibitions, prize concerts, raffles at fair

etc., and includes various form of gambling. The essential elements are:

(1) consideration; (2) prize; and (3) chance. All three of these elements must be present to make a lottery. Ballentine's Law Dictionary, 1948

Ed.p. 776

Ofcourse, in every lottery, there is a choice and as such there is an element of gambling but even though the lottery whether it is instant of other

lottery involving the element of "gambling", as long as it is one organised by the State Government, the sale of tickets of such lottery cannot be

banned or prohibited by the other state in the purported exercise of power, on the ground that it is gambling, therefore, falls under Entry 34 of List

II of Schedule 7 to the Constitution. Hence, the State Government cannot in the purported exercise of the executive power prohibit sale of lottery

tickets of the lotteries organised by any other State. It has already been pointed out by us that it does not lie within the purview of the State

Authority having regard to the fact that lotteries organised by the Government of India or the Government of States are kept out of the purview of

the State Legislature and vested in the Parliament as is evident from Entry 40 of List I of the Schedule 7 to the Constitution. Therefore, it matters

very little whether the instant lotteries organised by the States Mizoram, Manipur and Nagaland involve an element of gambling. In Writ Petition

No. 8046 of 1995, the instant lottery has been explained thus:

...The Government of Mizoram also organises an instant lottery. Under this scheme, at the time of printing of the lottery tickets, the draw itself is

held and the numbers of the prize winning tickets are announced. However, when the tickets are printed, the number of the ticket is covered and if

a person purchases a ticket, by scratching on the face of the ticket where the number is printed the ticket number will become visible. In this

manner, the person who purchases the lottery ticket is in a position to immediately find out whether he has won any prize. This type of lottery is

known as an instant lottery because a purchaser of the ticket instantly knows whether he has won the prize. Though it is an instant lottery, it

satisfies all the basic and essential features of a lottery organised by a State Government, as stipulated in the order of the Supreme Court.

Similar are the averments made in the other writ petitions also. Therefore, in the case of instant lottery, all the three elements to make it a "lottery"

are available viz., consideration, prize and chance. Ofcourse the result of an instant lottery is known immediately after the ticket is purchased and

the substance which covers the numbers is erased. Therefore, it is not possible to hold that instant lottery does not fall under the expression

"lottery" organized by the Government of the States.

21. The next question is as to whether the instant lotteries in question can be held to have been organised by the three states in question. The

Secretaries of the respective States have filed the affidavits. In the counter affidavit filed by the State of Tamil Nadu, except stating that certain

certificates are not produced, nothing is stated to discard the statements made by the Secretaries in the supporting affidavits that the instant lotteries

in question are organised by the respective State Governments. All the characteristics as stated by the Supreme Court in State of Haryana Vs.

Suman Enterprises and Others, to prima facie indicate that the instant lotteries in questions are organised by the respective State Governments are

found to exist. Therefore, we find it difficult to agree with the contention of the learned Advocate General that the instant lotteries in question

cannot be held to have been organised by the State Government of Mizoram, Manipur and Nagaland. We accordingly, answer point No. 1 as

follows:

The instant lottery is a "lottery". The instant lotteries in question are organised by the respective State Governments of Manipur, Mizoram and

Nagaland. They fall within the permission already granted by the Government of Tamil Nadu in the orders dated 3.10.1994, 25.11.1994 and

25.1.1995 to the respective State Governments of Mizoram, Nagaland and Manipur.

22. Point No. 2: As the State Government is required to be satisfied whether the lotteries are organised by the respective State Governments in the

light of the decision, of the Supreme Court in State of Haryana Vs. Suman Enterprises and Others, following which the Tamil Nadu State

Government also has granted permission to the three States in question. It becomes necessary for any State in order to sell the lottery tickets of the

lottery organised by in the State of Tamil Nadu or in any other State, to make an application to the State Government for permission setting out all

the features of such lottery to show that it is organised by the State. Therefore, whenever the States which have already been granted permission

by the Tamil Nadu State Government or other State Government intend to sell their lottery tickets in the other State, want to introduce a new

series of lotteries, they are required to apply to the Tamil Nadu State Government or to other Government as the case may be seeking permission

to introduce the new series of State organised lotteries. In such an event, the State Government has to consider such an application in the light of

the judgment of the Supreme Court in State of Haryana Vs. Suman Enterprises and Others, . If the lottery is organised by the State, it cannot be

prohibited.

23. As far as the instant lottery is concerned, it is the case of the petitioners that subsequent to the grant of permission by the Tamil Nadu, State

Government, they have been conducting it. The impugned order is passed neither on the ground that the instant lotteries in question are not

organised by the respective States nor on the ground that permission from the State Government was not obtained, but on the ground that the

instant lotteries will have delirious effect on the people. As such, the impugned order is beyond the authority of the State Government because the

instant lotteries in question are organised by the States of Manipur, Mizoram and Nagaland. Thus, we are of the view that the impugned order of

Tamil Nadu State Government being unconstitutional, cannot be sustained. Accordingly, point No. 2 is answered as follows:

Before introducing new series of lotteries, it is necessary for the other States to seek permission from the State Government in which the tickets of

the new series of lotteries are intended to be sold only to show that the lottery or lotteries is or are organised by the State and not for any other

purpose. As the instant lotteries in question are held to have been organised by the respective three States of Manipur, Mizoram and Nagaland, it

is not necessary to seek any fresh permission.

24. Point No. 3: While dealing with Point No. 2, we have pointed out that as instant lottery falls within the permission already granted and as it is

organised by the respective State Governments, the Tamil Nadu State Government acted without the authority of law and contrary to the

provisions of the constitution in prohibiting the Sale of the instant lottery, tickets in question in the State of Tamil Nadu. That being so, the impugned

order is liable to be interferred with. Point No. 3 is answered accordingly.

25. For the reasons stated above, the writ petitions are allowed. The impugned order G.O.Ms. No. 819, Home (Courts II) Department, dated

2.6.1995, in so far as it relates to instant lotteries is quashed. No costs.

26. In so far as the single digit lottery is concerned, as already pointed out it is submitted on behalf of the petitioners that they are not conducting

any single digit lotteries. Therefore, we have left that question open and our order should not be construed as covering single digit lotteries.

27. If the State Governments in question introduce any new series of lotteries, they have to take the permission from the Tamil Nadu State

Government to sell the same in the State, on making appropriate application to show that the new series of lotteries are organised by the State and

satisfy the conditions laid down by the Supreme Court in State of Haryana Vs. Suman Enterprises and Others, .

28. In view of the order passed in the writ petitions, the writ appeal is allowed. The order dated 8.7.1996 passed by the learned single Judge in

W.M.P. No. 13110 of 1995 in W.P. No. 8180 of 1995 is set aside. No costs.