

Topic: Trade Or Business And Their Relationship With Centre And State Between Article 73 (A) And 298 And Also Article 258 (B) And 298

Name of the Case: H. Araj v. State of Maharashtra, AIR 1984 SC 781

Bench: Justice O. Chinnappa Reddy, Justice E.S. Venkataramaiah, Justice R.B. Mishra

Fact of the Case: The petitioners who were agents for the sale of tickets for lotteries conducted by various State Governments other than the State of Maharashtra contended writ petition, that the aforesaid ban that was sought to be imposed had no legal authority. Under the Constitution, lotteries organised by Government of India or the Government of the State was a subject which was within the exclusive legislative competence of Parliament and that it was not open to the government of any state purporting to act in exercise of its executive power to impose such ban. On the behalf of the State Government, the respondent, it was contended that the Union government's executive power was coextensive with the power to make laws, that the President in exercise of his power under Article 258 (1) had entrusted to the State Government that executive power of Union through a Presidential order in respect of lotteries run by the State, and therefore it was competent for the State Government to impose the ban.

Judgment: The Supreme Court held that the Government of Maharashtra cannot purport to ban the sale of lottery ticket of other states by the virtue of the entrustment of power under Article 258 (1) of the Constitution.

It was observed that Article 73 extends the execute the power of Union to the matters with respect to which Parliament has power to make laws. But the executive power of Union, by the way the opening words of Article 73 is "subject to the provisions of Constitution". Therefore, it follows that executive power of Union with respect to lotteries organised by the Government of State has necessarily to be exercised subject to the provision of Constitution including Article 298, which expressly extends the executive power of the state to the carrying on of any trade or business subject only to legislation by Parliament if the trade or business subject only to which the state legislature may make laws.

Reading and considering Article 73 and 298 together, 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 executive power of the Union. The Government of 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, a condition imposed by such permission that lottery tickets of one state may not be sold in another state cannot be enforced by the other state. The other state has no power to make any laws in regard to lotteries organised by the first state. The other state has no power to make law in regard to lotteries organised by first state. Its executive power, by the virtue of Article 298, extends to lotteries organised by itself but not to lotteries organised by other state.

If a state Acts in breach of the conditions imposed by President while investing the power under Article 258 it is open to the President to revoke the permission or to take such further or other action as may be constitutionally permissible but it cannot possibly enable the government of other state to do anything about it except to complain perhaps to the Union government.
