

State Of Haryana vs Suman Enterprises on 21 April, 1994

Equivalent citations: 1994 SCC (4) 217, 1994 SCALE (2)844, AIRONLINE 1994 SC 107, 1994 (4) SCC 217 (1995) BANK J 183, (1995) BANK J 183

Bench: B.P. Jeevan Reddy, P.B. Sawant, Yogeshwar Dayal, S. Mohan

PETITIONER:

STATE OF HARYANA

Vs.

RESPONDENT:

SUMAN ENTERPRISES

DATE OF JUDGMENT 21/04/1994

BENCH:

VENKATACHALLIAH, M.N. (CJ)

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JEEVAN REDDY, B.P. (J)

SAWANT, P.B.

YOGESHWAR DAYAL (J)

MOHAN, S. (J)

CITATION:

1994 SCC (4) 217

1994 SCALE (2)844

ACT:

HEADNOTE:

JUDGMENT:

ORDER TAMIL NADU MATTERS Writ Petition (C) Nos. 739, 756, 982, 1019, 1054, 1057, 1204 and 1205 of 1990, SLP (C) Nos. 9238, 11611 and 11613 of 1990, TC Nos. 70, 66, 67 and 68 of 1990, WP (C) No. 1121 of

1. There is an executive order No. GOMs No. 1101 dated 6- 10-1989, promulgated by the State of Tamil Nadu prohibiting the sale of lottery tickets of other States. The relevant part of the said order reads thus:

"2. The lotteries mainly fall under five different categories.

- (a) Lotteries organised by the Government of India.
- (b) Lotteries organised by the Government of Tamil Nadu.
- (c) Lotteries organised by other State Governments.
- (d) Private Lotteries authorised by Government of Tamil Nadu, and
- (e) Private Lotteries authorised by other Governments but not authorised by this Government.

Government have decided, in view of the reasons referred to in para 1 above that the sale of lottery tickets of the Government of Tamil Nadu and the lotteries organised by Government of India or other State Governments alone will henceforth be permitted within the State of Tamil Nadu. Private Lotteries of any kind are not authorised to be sold within the State of Tamil Nadu."

2. The order clearly implies if it did not, it would have required the order to be read down to mean that prohibition does not extend to the sale of lottery tickets of lotteries 'organised' by other States. This is the implication arising out of a proper construction of Entry 40 of List I and Entry 34 of List 11 of the Seventh Schedule. The said Entry 34 of List II provides "Betting and Gambling". Entry 40 of List I provides "Lotteries organised by the Government of India or the Government of a State".

3. 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 of 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 of 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.

4. The concept of 'royalty' being paid by the 'agent' would perhaps not be consistent with the idea of relationship between the principal and agent. This Court in *Akadasi Padhan v. State of Orissa* though in a different context indicated what kind of transaction detracts from the idea of an 'agency'. It was observed: (SCR pp. 721, 722)) "Clause provides that subject to other terms and conditions, all charges and out goings shall be paid by the agent and he shall not be 1 1963 Supp 2 SCR 691 : AIR 1963 SC' 1047 entitled to any compensation whatsoever for any loss that may be sustained by reasons of fire, tempest, disease, pest, flood, drought or other natural calamity, or by any wrongful act committed by any third party or for any loss sustained by him through any operation undertaken in the interest of fire conservancy. This clause clearly shows that the agent becomes personally liable to bear the loss which, under the normal rules of agency, the principal would have to bear. We have not thought it necessary to refer to all the clauses in detail because we are satisfied that even if the agreement is broadly considered, it leaves no room for doubt that the person appointed under the agreement to work the monopoly of the State is not an agent in the strict and narrow sense of the terms contemplated by Article 19(6)(ii). The agent appointed under this agreement seems to carry on the trade substantially on his own account, subject, of course, to the payment of the amount specified in the contract. If he makes any profit after complying with the said terms, the profit is his; if he incurs any loss owing to circumstances specified in clause 6, the loss is his. In terms, he is not made accountable to the State Government; and in terms, the State Government is not responsible for his actions. In such a case, it is impossible to hold that the agreement 'in question is consistent with the terms of Section 3 of the Act."

It would, therefore, prima facie, seem that the idea of a fixed sum of 'royalty' paid by the 'agent' would be more consistent with the idea of enfranchisement or farming out of a right to organise a lottery than with the idea of an "Agency".

5. If the basic and essential features indicated above are ensured, it might be possible to raise a presumption that the lottery is one that could be said to have been 'organised' by the State itself and not one merely authorised by the State under which the so-called 'agent' himself organises the lottery. In the present case, prima facie we abstain from any final pronouncement of this question which requires to be decided at the final hearing some of these essential characteristics seem to be missing. It will not be possible at the interlocutory stage to hold that the Sikkim scheme is outside the State power of regulation of "Betting and Gambling" and does not attract the ban contemplated by the Tamil Nadu Government's Notification GOMs No. 1101 dated 6- 10- 19 89.

6. Shri K.K. Venugopal, teamed Senior Counsel appearing for the State of Sikkim, however, made an impassioned plea that a small border State of the country which has no substantial independent economic resources of its own has been deriving considerable income from these lotteries by sale of tickets in other affluent parts of the country and that the stopping the sale of the tickets in the State of Tamil Nadu as now sought to be done, will have the effect of cutting off the economic arteries sustaining the State.

7. While we appreciate the predicament of the State, we cannot also overlook the power of the State to regulate the sale of lottery tickets not organised by the Union or other States. If the State of Sikkim or any other State organises its lottery which satisfies the aforesaid essential features which can alone qualify a lottery as one 'organised' by the State, it would quite obviously be outside the regulatory power of any other State under Entry 40 of List 11 and accordingly the prohibition would not apply. It is open to the State of Sikkim to evolve an appropriate and acceptable scheme and if necessary seek the protection of its rights to sell the tickets under that scheme by an appropriate application before court.

8. The schemes of lotteries of the States of Mizoram, Nagaland, Arunachal Pradesh, Goa and Kerala are more or less similar. All interim and interlocutory orders of stay granted in favour of the States of Sikkim, Mizoram, Nagaland, Arunachal Pradesh, Goa and Kerala shall stand vacated. However, in order that the rights of the purchasers of tickets already sold in respect of the next draw are not affected, the earlier order of stay shall continue to operate till 5-5-1994.

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9. The stay prayed for is refused.

10. We are prima facie of the view that the extant lottery scheme of Mizoram does not satisfy the requirements indicated in the order made today in Tamil Nadu matters. If, however, a revised scheme which conforms to the minimal requirements which render the scheme eligible to be recognised as one organised by the State, the State may move for appropriate protection of the right to sell the tickets in the State of Madhya Pradesh. With these observations and liberty so reserved, the stay application is dismissed. Writ Petition (C) No. 356 of 1993

11. Petitioner claims to be an agent who is dealing with lottery tickets of lotteries organised by various States. Petitioner's argument is that the law which imposes a blanket ban on the sale of lottery tickets cannot operate irrespective of the question whether the tickets are of lotteries 'organised' by the State or of lotteries merely authorised by the State. The contention of the learned counsel for the petitioner is that the State has no power under Entry 34 of List 11 to impose a ban on the sale of tickets of lotteries 'organised' by the Union or other States. Learned counsel says that the lotteries organised by the States of Haryana, Rajasthan, West Bengal, Uttar Pradesh, Delhi, Mizoram, Kerala, Karnataka and Tamil Nadu are themselves instances in point. It is urged that the tickets of the lotteries of these States cannot be prohibited from being sold in the State of Madhya Pradesh.

12. The essential question is whether under the various schemes sponsored by the other States the lotteries can be said to be those 'organised' by the State as distinct from those merely authorised by them. In the course of our order made today in Tamil Nadu matters we have indicated though as a prima facie indication at the interlocutory stage what prima facie appeals to us to be the minimal criteria which render a lottery to be eligible to be called one 'organised' by a State. We do not propose to examine the details of the schemes of the various States referred to by the petitioner. However, the petitioner shall be at liberty to make an appropriate application before the State of

Madhya Pradesh urging that the lotteries organised by the States referred to are immune from the State's regulatory power and that the petitioner is entitled to sell the tickets of the lotteries of these States in the State of Madhya Pradesh. The State Government will examine the representation in the light of the criteria indicated in our order made today in Tamil Nadu matters and make appropriate order whether, in its opinion, the schemes of lotteries of the aforesaid States qualify for being reckoned as lotteries 'organised' by those States. If it comes to that conclusion, it shall declare and notify that the tickets in respect of those lotteries are outside the ban contemplated by Madhya Pradesh Lottery Pratibandh Act, 1993. The State shall make a speaking order and dispose of the representations within four weeks from the day the representation is submitted.

13. Shri S.K. Agnihotri, learned standing counsel for the State of Madhya Pradesh states that the Director of Lotteries in the State will be the authority who will examine and dispose of the representation. This submission is placed on record.

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14. We have heard Shri M.L. Verma, learned Senior Counsel for the State of Bihar and Shri Gopal Subramaniam, learned Senior Counsel for the respondents.

15. Before the High Court the respondents assailed the constitutional validity of the Bihar Ban on Lottery Ordinance, 1993, which sought to prohibit the sale of lottery tickets in the State of Bihar. The preamble of the Act reads as under:

"Whereas detrimental impact of the lottery business has been noted on social and economic condition of people particularly on the poorer section of the society;

And whereas there has been a serious adverse effect on public order on account of the said lottery business;

And whereas in view of the above it is intended to stop all the lotteries in the State;

And whereas the State Legislature is not in session and the Governor of Bihar is satisfied that circumstances exist which render it necessary for him to take immediate action to ban the sale of lottery tickets in the State of Bihar."

Section 3 of the Act provides:

"Ban on Lottery.- Notwithstanding any agreement or contract entered into by the State Government with any person no person shall be permitted to deal within the trade or business of lottery or be an agent or promoter in respect of any lottery nor shall he sell, distribute or purchase any lottery ticket within the territory of Bihar State."

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16. Prima facie, the High Court correctly recognised the distinction and the effects that flow from that distinction between lotteries 'organised' by the State and those merely authorised by the State. In para 10.6 the High Court observed as under:

"A new case has been sought to be made on the written statement on the question as to what is meant by 'organised'. However, I have made it quite clear that the Act: so far it deals with cases of lotteries not organised' by the Central Government or any State Government, is valid and the State would be at liberty to act according to the said Act to that extent. Accordingly, in a given case where it is organised or not, shall be determined and it is not for us to deal with the same in view of the limited scope or our judgment as stated hereinabove, i.e., the question of legislative competency only."

The State has now come up in appeal by special leave. It also seeks a stay of the operation of the judgment under appeal.

17. We stay the operation of the judgment under appeal pending final disposal of the appeals. However, it is open to the respondents to apply to the State Government pointing out that the tickets of the lotteries in the business of sales of which they are engaged, are of lotteries 'organised' by the State and that, therefore, such sales should not be prohibited in the State of Bihar. If such an application is made, the State Government will examine the matter and make a speaking order whether in its opinion the schemes of the lotteries are such as to render the lotteries 'organised' by the States concerned or merely lotteries authorised by the States. In doing so the State of Bihar shall take into account and apply the criteria indicated in our order made today in Tamil Nadu matter.

18. Shri Verma, learned Senior Counsel for the State says that the matter will be examined by the Secretary, Finance Department, Government of Bihar. That authority shall dispose of the representation within 4 weeks from the dates they are made.

19. The stay granted of the operation of the judgment under appeal shall, however, operate from 12-5-1994 onwards so that any arrangement made in the meanwhile should not be dislocated. No tickets for any draws to be made after 11-5- 1994 shall be sold from 12-5-1994 onwards, except to the extent permitted by the specific order of the Finance Secretary.

Court Masters