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# IN THE HIGH COURT OF SIKKIM

## WRIT PETITION (C) NO. 2 OF 2003

1. State of Sikkim, represented through the Principal Secretary, Finance Department, Government of Sikkim, Tashiling Secretariat, Gangtok - 737 101, Sikkim.
2. The Director, Sikkim State Lotteries, Gangtok, Sikkim.
3. M/s. Martin Lottery Agency Ltd., Daisy Plaza, 355-359, 6th Street, P.B. No. 2986, Gandhipuram, Coimbatore - 641 012.
4. M/s. Tashi Delek Gaming Solutions Pvt. Ltd., 135, Continental Building, Dr. Annie Beasant Road, Worli, Mumbai - 400 018.
5. M/s. Playwin Infravent Pvt. Ltd., No.443, Church Complex, Annasalai, 2<sup>nd</sup> Floor, Tajampet, Chennai - 600 018. ... Petitioners.

- VERSUS -

1. State of Tamil Nadu, through the Chief Secretary to the Government of Tamil Nadu, Chennai.

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2. The Director of Tamil Nadu Raffles, LLA Building, 3<sup>rd</sup> Floor, 735, Anna Salai, Chennai - 2.
3. The Director General of Police, State of Tamil Nadu, Chennai. ... Respondents.

**Coram: Hon'ble Mr. Justice N. S. Singh, Judge.**

Present: Mr. S.P. Wangdi, Advocate General/Senior Advocate assisted by Mr. A. Moulik, Mr. J. B. Pradhan, Mr. Karma Thinlay and Mrs. L. Chakraborty, Advocates for the petitioners.

Mr. V. Raghupatti, Govt. Pleader assisted by Mr. B. Sharma, Advocate for the respondents.

**Date of Decision: July 21, 2003.**

## J U D G M E N T

**Singh, J.**

In this writ petition, the writ petitioners, five in number, questioned the validity of the impugned notification bearing G.O.Ms. No.20 dated 8<sup>th</sup> January 2003 issued by the Government of Tamil Nadu as in Annexure-P5 to the writ petition by contending inter alia, that the impugned notification is arbitrary, malafide, ultra-virus of the scheme of

*N. Singh*

the Lotteries (Regulation) Act, 1998 and also violative of Article 14 of the Constitution of India. In the said writ petition, the writ petitioners highlighted the following facts: -

Sikkim a sovereign kingdom is merged with the Union of India as its 22<sup>nd</sup> State. Sikkim is a small mountainous State with difficult terrain and no mineral resources worth the name and also has no industries other than few small-scale industries. Since the State of Sikkim has limited resource-generating capacity, it is highly under-developed. The petitioner-State has been exploring possibilities to generate and enhance its own revenue by various means and is engaged in the business of organising lotteries and has formulated several schemes such as - (i) paper lotteries which are sold throughout the country by distributors, wholesalers, etc., (ii) On-line lottery organised by the petitioner-State and marketing through its marketing agent.

In view of the limited resources and under-development, the petitioner-State with an object of raising additional revenues to be spent on welfare activities and developmental programs of the State conceived the idea of floating an On-line lottery system in accordance with the Lotteries (Regulation) Act, 1998.

Short term tender notice at National level were floated on 8<sup>th</sup> July, 9<sup>th</sup> July and 10<sup>th</sup> July 2001

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inviting applications/quotations for said On-line lottery.

Sealed Tenders were opened and technical and financial evaluations of the offer were examined by the tender committee.

Agreement for the On-line lottery executed at Gangtok between the petitioner-State and M/s. Tashi Delek Gaming Solutions Pvt. Ltd. whereby the said company was appointed as the Marketing Agent for the petitioner-State.

Sikkim On-line lottery launched all over India. First draw held on 29<sup>th</sup> March 2002. Till now there has been about 58 draws of Super lotto and 48 draws of Thunder Ball and petitioner-State has earned revenue to the tune of Rs.73.32 crores approximately.

Section 5 of the said Act is reproduced – “A State Govt. may, within the State, prohibit the sale of tickets of a lottery organised, conducted or promoted by another State”.

Section 6 – “The Central Govt. may, by order published in the Official Gazette, prohibit a lottery organised, conducted or promoted in contravention of the provisions of Section 4 where tickets of such lottery are sold in contravention of the provisions of Section 5”.

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These above provisions are more or less in consonance with the guidelines stipulated in the case of *Suman Enterprises v. State of Haryana*.

2. Supporting the case of the petitioner-State and other petitioners, Mr. S. P. Wangdi, learned Advocate General and Mr. A. Moulik, learned counsel submitted thus -

The **Supreme Court** in ***B. R. Enterprises v. State of U.P. & ors.*** reported in **(1999) 9 SCC 700** upheld the validity and vires of the Lotteries (Regulation) Act, 1998. In the above case the Supreme Court interpreted Section 5 to mean that the State can prohibit other State lotteries only if it does not conduct its own lotteries.

As far as petitioner-State is concerned, it is carrying on the business of running the lotteries organised by it in strict conformity with the provisions of Section 4 of the said Act.

When the Lottery Ordinance was in force, the State of Tamil Nadu under Section 5 of the said Ordinance passed G.O.Ms. No.1203 Home (Courts II) Department dated 24<sup>th</sup> November 1997 prohibiting the sale of lottery tickets of other States from 1<sup>st</sup> January 1998. Such a ban was imposed when the State of Tamil Nadu

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was running its own lotteries. In B. R. Enterprises case, the said G.O.Ms. was held to be invalid in view of the interpretation rendered by the Supreme Court on Section 5 of the Act.

Under Section 12 of the Act, the State of Tamil Nadu framed the Tamil Nadu State Lotteries (Regulation) Rules, 2002 and the Tamil Nadu State On-line Lottery (Regulation) Rules, 2002. (Annexures P2 and P3). Rule 20 of the above Rules Annexure P2 is in contravention of Section 5, 6 and 12 of the Lotteries (Regulation) Act, 1998 enacted by the Parliament.

Even if the lotteries are organised by any State Government in contravention of Section 4 of the Act, it is the Central Government alone which can prohibit such lotteries.

Under Section 12 of the Act, the State Government has power to make Rules in respect of its own lotteries to ensure compliance of Section 4 of the Act.

Respondent State of Tamil Nadu refused to accept the Sales tax from the sub agents of the petitioners on the ground that no approval of the State of Tamil Nadu has been obtained in compliance with the Tamil Nadu State Lotteries (Regulation) Rules, 2002.

G.O.Ms. No.308 dated 9<sup>th</sup> September 2002 (Annexure P4) issued by the respondent-State,

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prescribing certain guidelines for sale of State lotteries in Tamil Nadu based on the Rules framed.

Cumbersome procedures have been laid down as a device that it would not be possible for any other States to comply and operate in the State of Tamil Nadu. As such, the action in framing such cumbersome procedures are nothing but a colourable exercise of power and therefore, is arbitrary, unreasonable, malafide and beyond jurisdiction.

Rule 20 and 21 of the said Rules 2002 has been framed in order to avoid competition and illegally prohibit the sale of tickets organised by other State Government.

Under Rule 12 the officials of the State Government of Tamil Nadu sought for information relating to the conduct of Sikkim lotteries. Accordingly, the same were furnished by the petitioner-State. However, for a long time no order was passed and the petitioner-State was constrained to file Writ Petition No.36067 of 2002 in the High Court of Madras, challenging the validity of Rule 20 of the Rules. The Madras High Court by order dated 19<sup>th</sup> September 2002 directed that no prosecution or seizure of the lotteries or action under Rule 20 be effected without giving any fair and reasonable opportunity.

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Notification G.O.Ms. No.20 Home (Courts II) Department dated 8<sup>th</sup> January 2003 (Annexure P5) issued by the respondent State of Tamil Nadu whereby the sale of lottery tickets including that of Tamil Nadu, within the territory of Tamil Nadu have been prohibited. Annexure P5 is absolutely arbitrary, capricious, malafide and in gross violation of principles of natural justice and other provisions of the Constitution.

By issuing Annexure P5 the sale of lottery tickets of the petitioner-State have been brought to abrupt halt without following issuing any prior notice. Annexure P5 is violative of the law laid down in B. R. Enterprises case by the Supreme Court of India, as only sale of lottery is banned and the respondent-State has not declared itself as a lottery free zone and as the ban is only with regard to the sale of tickets and not from organising it.

3. The case of the writ petition is resisted and contested by the respondent-State of Tamil Nadu by filing counter affidavit. According to the respondents, the writ petition is not sustainable both in law and on facts inasmuch as the same State of Sikkim represented by its Director, State

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of Sikkim Lotteries, Government of Sikkim at Gangtok filed similar writ petition being No.36067/02 challenging the validity of Rule 20 of the Tamil Nadu State Lotteries (Regulation) Rules, 2002 vide G.O.Ms. No.139, Finance (Raffles) Department, dated 19<sup>th</sup> April 2002 and when the said writ petition came up for orders before the Hon'ble Single Judge of Madras High Court, the Hon'ble Court passed an ad-interim order on 19<sup>th</sup> September 2002 to the effect that respondent-State shall not initiate any action under Rule 20 of the Tamil Nadu State Lotteries (Regulation) Rules, 2002, nor initiate any prosecution or seize the lotteries of the petitioner-State without giving any fair and reasonable opportunity to the petitioner. But in the meanwhile, the Government of Tamil Nadu has banned the sale of lotteries including that of Government of Tamil Nadu under the impugned notification dated 8<sup>th</sup> January 2003. Similar writ petitions and writ appeals were heard by the Hon'ble Division Bench of the Madras High Court and those cases were disposed of finally with the following observations: -

“(i) the impugned G.O.Ms. No.20 dated 8.1.2003 is valid.

(ii) The impugned G.O.No.20, dated 8.1.2003 has got only prospective operation from 9.1.2003 and from that date onwards, no

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lottery ticket, either of State of Tamil Nadu or other States, shall be authenticated or subjected to sales tax.

(iii) All such lottery tickets, either of the State of the Tamil Nadu or of other states and which have suffered the sales tax under the Tamil Nadu General Sales Tax Act, 1959 (Tamil Nadu Act 1 of 1959) upto 8.1.2003 can be transferred by the Sale Agents to sub-agents (retailers) and they, in turn to the individual purchasers.

(iv) The appropriate Authorities are directed to conduct draws of the lottery tickets mentioned in Clause (iii) above.

(v) by conducting such draws as mentioned in clause (iv) above, the future dates of draws, which were already set beyond this date, shall be held on the said set dates while the dates of draws between 9.1.2003 and this date shall be rescheduled maintaining the same time span starting from tomorrow.

All the Writ appeals and writ petitions are disposed of accordingly. No costs. Consequently, all the connected W.A.M.Ps and W.P.M.Ps are closed.

4. It is also the case of the respondent-State of Tamil Nadu that against the common Judgment of the Division

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Bench of the Madras High Court, State of Mizoram and others filed appeals by way of Special Leave Petition before the Hon'ble Supreme Court of India and the Apex Court by its order dated 7<sup>th</sup> February 2003 dismissed those 3 Special Leave Petitions being SLP(C) No.2302/03, SLP(C) No.2378/03 and SLP(C) No.1535/03. In other words, the impugned notification dated 8<sup>th</sup> January 2003 is a valid notification in the eye of law.

**5.** Mr. V. Raghupatti, learned Government Pleader appearing for the State-respondents, submitted that since the Hon'ble Supreme Court of India has upheld the Judgment of the Hon'ble Division Bench of the Madras High Court, the present writ petition is not maintainable/sustainable and liable to be dismissed that since any order or direction passed by the Hon'ble Supreme Court of India will be binding on the authorities and the persons all over India in terms of Article 141 of the Constitution of India. It is also contended by Mr. V. Raghupatti, learned Government Pleader appearing for the respondent-State of Tamil Nadu that this Court (High Court of Sikkim) has no jurisdiction to entertain the above writ petition since no part of cause of action arises within the State of Sikkim since the lotteries have to be sold within the

*N. Raghupatti*

territory of State of Tamil Nadu for which cause of action will arise only within the territorial jurisdiction of Madras High Court.

6. According to Mr. V. Raghupatti, learned Government pleader, there is no infirmity or illegality in the impugned notification dated 8<sup>th</sup> January 2003 as the Government of Tamil Nadu has banned the sale of lotteries including that of Government of Tamil Nadu by virtue of the impugned notification dated 8<sup>th</sup> January 2003 under the powers conferred by Section 5 of the Lotteries (Regulation) Act, 1998, in short, Act of 1998.

7. At the hearing, Mr. S. P. Wangdi, learned Advocate General appearing for the State of Sikkim, replying to the arguments of Mr. V. Raghupatti, learned Government Pleader submitted that by virtue of impugned notification dated 8<sup>th</sup> January 2003, the required revenue of the State of Sikkim has been severely affected as the sales of lottery tickets, i.e. the Sikkim State On-line Lotteries have been banned by the respondent-State. According to Mr. Wangdi, learned Advocate General, the draws of the on-line lotteries is held in Gangtok, Sikkim, the main prizes are paid by the State of Sikkim, and the revenue is deposited in the State of Sikkim and the

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impugned order of the respondent-State of Tamil Nadu was issued by the Government of Tamil Nadu which was received by the petitioner-State on 20<sup>th</sup> January 2003 at Gangtok and that being the position the cause of action in part, if not wholly, is arising within the territory of Sikkim and, therefore, this Court has the jurisdiction to entertain and hear the present writ petition. In support of his contention, the learned Advocate General has cited the judgment/decision of the Apex Court in the case of Bipin Chandra Lakhera v. Union of India & Anr. passed in Civil Appeal No.1036 of 2001 arising out of SLP(C) No.14563 of 2000 and contended that in that case, the High Court of Sikkim, by virtue of related judgment dated 12<sup>th</sup> May 2000 passed in Writ Petition No.542 of 1998 between Bipin Chandra Lakhera v. Union of India & ors., held that it was not at all essential for the petitioner to allege and prove to claim the reliefs prayed for in the petition that the impugned orders were communicated to him in Sikkim and in that case, the impugned orders were passed in Delhi and the authority that passed the order is not located within the jurisdiction of the Court and accordingly, the said writ petition was dismissed. However, the Apex Court, examining the matter, held that the High Court committed serious error in holding the application to be not maintainable on the ground of territorial jurisdiction and on

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the basis of the fact that the petitioner is serving at Sikkim and was served with the impugned order while serving at Sikkim. Mr. Wangdi, the learned Advocate General produced the copies of the related judgment and order of the Apex Court as well as the High Court of Sikkim. Having heard the learned counsel for the petitioners and the learned Government Pleader for the State-respondents in the related issue of maintainability, I have no hesitation to come to the conclusion that the High Court of Sikkim has territorial jurisdiction in the matter. But so far the validity of the impugned notification dated 8<sup>th</sup> January 2003 is concerned, I am of the view that there is no illegality or infirmity in the impugned notification or violation of the related provision of the Act of 1998 and the Rules framed thereunder by the Government of Tamil Nadu for the following reasons: -

**8.** From the available materials on record it is revealed that the State of Sikkim represented by its Director, State of Sikkim Lotteries, Government of Sikkim filed a writ petition No.36067/02 challenging the validity of Rule 20 of the Tamil Nadu State Lotteries (Regulation) Rules, 2002 in G.O.Ms. No.139, Finance (Raffles) Department, dated 19<sup>th</sup> April 2002 and in that case, the learned Single Judge of Madras High Court passed ad interim order dated 19<sup>th</sup>

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September 2002 in the connected misc. petitions (ref. Writ Petition No.36067/02) and in the meanwhile, the Government of Tamil Nadu has banned the sale of lottery tickets organized, conducted or promoted by every State including the State of Tamil Nadu vide impugned notification dated 8<sup>th</sup> January 2003 by invoking the provision of Section 5 of the Lotteries (Regulation) Act, 1998 and that being the position, similar writ petitions and writ appeals were heard by the Division Bench of Madras High Court. State of Sikkim represented by its Director, Sikkim State Lotteries, Government of Sikkim, Gangtok is one of the party-appellant in Writ Appeal No.3446 of 2002. In those writ appeals and writ petitions, there were three main / contentious issues which are as follows: -

(1) Whether the impugned G.O.Ms.No.20 Home (Courts II) Department dated 8<sup>th</sup> January 2003 is unconstitutional and invalid;

(2) If the impugned G.O. is valid, whether the same acts only prospectively prohibiting the sale of lottery tickets from 9<sup>th</sup> January 2003 onwards and cannot affect the lottery schemes announced up to 8<sup>th</sup> January 2003 and the tickets meant and issued therefore.

(3) In any event, can the lotteries which have been purchased upto 8<sup>th</sup> January 2003 be

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brought within the protective umbrella of the doctrines of legitimate expectation and promissory estoppel.

and those issues were examined by the learned Division Bench of Madras High Court and the Madras High Court held thus: -

(i) the impugned G.O.Ms. No.20 dated 8<sup>th</sup> January 2003 is valid;

(ii) the impugned G.O.Ms. No.20 dated 8<sup>th</sup> January 2003 has got only prospective operation from 9<sup>th</sup> January 2003 and from that date onwards, no lottery ticket, either of State of Tamil Nadu or other States, shall be authenticated or subjected to sales tax;

(iii) all such lottery tickets, either of the State of Tamil Nadu or of other States and which have suffered the sales tax under the Tamil Nadu General Sales Tax Act upto 8<sup>th</sup> January 2003, can be transferred by the sole agents to sub-agents (retailers) and they, in turn, to the individual purchasers;

(iv) the appropriate Authority/ies are directed to conduct draws of the lottery tickets mentioned in clause (iii) above;

(v) by conducting such draws as mentioned in clause (iv) above, the future dates of draws,

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which were already set beyond this date, shall be held on the said set dates while the dates of draws between 9<sup>th</sup> January 2003 and this date shall be re-scheduled maintaining the same time span starting from tomorrow.

9. In the said cases, the Division Bench of Madras High Court held that the impugned notification in the present writ petition dated 8<sup>th</sup> January 2003 is valid vide, common Judgment dated 24<sup>th</sup> January 2003 passed in W.A. Nos.3358, 3446, 3627 of 2002 and W.P. Nos.44221, 43409 of 2002 and others. The validity of the said common Judgment of the Division Bench of Madras High Court was questioned by the State of Mizoram and two agents of State of Bhutan and Arunachal Pradesh by way of Special Leave Petition before the Hon'ble Supreme Court of India and, the Hon'ble Supreme Court by its order dated 7<sup>th</sup> February 2003, dismissed those Special Leave Petitions, namely SLP(C) No.2302/03, SLP(C) No.2378/03 and SLP(C) No.1535/03. The copies of the related common Judgment and Orders passed by Madras High Court as well as the Apex Court find its place in the record of this case as the respondent-State filed those documents which are marked as Annexure D1 and D2 to the connected application dated 21<sup>st</sup> March 2003. The factum of filing of writ appeal by the State of Sikkim before the Madras

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High Court is not disclosed in the present writ petition. On the other hand, the learned Advocate General for the State of Sikkim contended that the order dated 7<sup>th</sup> February 2003 passed by the Hon'ble Supreme Court in the connected SLP cases mentioned above is not binding and as such, this Court can decide the present writ petition on its own merit. The learned Advocate General contended that as the said order of the Apex Court is an order of dismissal of the Special Leave Petition without any reasons, it cannot be deemed to be declaration of law in terms of Article 141 of the Constitution of India. Supporting his contention the learned Advocate General has relied upon the decision of the Apex Court rendered in ***State of U.P. & Anr. v. Synthetics and Chemicals Ltd. & Anr.*** reported in ***(1991) 4 SCC 139***. I could not agree with the submission advanced by the learned Advocate General on this issue as the Division Bench of Madras High Court held that the impugned notification dated 8<sup>th</sup> January 2003 is valid and the Special Leave Petitions preferred by the petitioners concerned were dismissed. This shows that the common Judgment of Madras High Court was affirmed by the Apex Court. Law is implied in the instant case in hand. It may be mentioned that a power conferred by a statute often contains expressed conditions for its exercise and in the absence of or in addition to the expressed conditions there

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are also implied conditions for exercise of the power. In some cases, the related order and judgment of the Court, though it is short in form, is implied for its legal value on the issue involved in the case(s). In legal term, the word "dismiss" has its definite connotation, implying a final disposal by a Court or Tribunal rejecting the case of the party/petitioner(s)/appellant(s). In other words, it speaks about the rejection of a case or claim made by the party concerned. Further the word "dismissed", meaning of which is manifest and evident with the party who filed the petition or appeal lost his or her case. According to me, the case law cited by the learned Advocate General for the State of Sikkim does not support the case of the writ petitioners. In that case, ***State of U.P. v. Synthetics and Chemicals Ltd.*** (supra), the Apex Court held thus –

"..... A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not *ratio decidendi*. In *B. Shama Rao v. Union Territory of Pondicherry* it was observed, 'it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein'. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent."

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The same principle of law is also followed by the Apex Court in a case between **Arnit Das v. State of Bihar** reported in **(2000) 5 SCC 488**. It is made clear that the Apex Court considered the related cases and those writ appeals and writ petitions were dismissed. This shows that the said common Judgment of the Madras High Court is valid and apart from that the Apex Court dealt with the point of law involved in those cases and the related issues were examined in the said Special Leave Petitions and thereafter, the Apex Court dismissed these cases. According to me, the order dated 7<sup>th</sup> February 2003 passed by the Apex Court in SLP(C) No.2302/03, SLP(C) No.2378/03 and SLP(C) No.1535/03 is binding on this Court.

**10.** So far the interpretation of the provisions of Sections 5 and 6 of the Lotteries (Regulation) Act, 1998 are concerned, the same has been finally settled by the Apex Court in a case between **B. R. Enterprises v. State of U.P.** and other similar cases reported in **(1999) 9 SCC 700**. For better appreciation in the matter, the provisions of Sections 5 and 6 of the Lotteries (Regulation) Act, 1998 are quoted below: -

“5. PROHIBITION OF SALE OF TICKETS IN A STATE. – A State Government may, within the State, prohibit the sale of tickets of a lottery organised, conducted or promoted by every other State.

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6. PROHIBITION OF ORGANISATION, ETC. OF LOTTERY. – The Central Government may, by order published in the Official Gazette, prohibit a lottery organised, conducted or promoted in contravention of the provisions of Sec. 4 or where tickets of such lottery are sold in contravention of the provisions of Sec. 5.”

In ***B. R. Enterprises v. State of U.P. (Supra)***, the Apex Court held that the provision of Section 5 of the Lotteries (Regulation) Act, 1998 has to be read down so as to read that it is only that State which decides as a public policy in public interest to make its State a lottery-free zone that it can prohibit lotteries of other States. While laying down these principles of law, the Apex Court held thus –

“In Section 2(b) lotteries are defined to be a scheme for distribution of prizes by a *lot or chance*. This definition itself recognises that even in State lotteries the prizes are to be collected by chance without any skill, hence gambling in nature. Section 3 prohibits that no State lotteries can be organised without the condition stipulated under clauses (a) to (k) of Section 4. Section 4 provides the conditions to be complied with by the State lotteries. To initiate any State lottery it is left to the policy of each State, for this the Act is silent. The only control is, in case it decides, then it must follow the conditions as laid down under Section 4. Next comes Section 5 which is subject-matter of challenge, the delegation of power to the State to prohibit the sale of lottery tickets organised by every other State. If a State desires not to subject its people to the lottery gambling, it has no power to restrict lotteries organised by other States. It is to remove this mischief that power is conferred through delegation to the States to do it in terms of their own policy. By virtue of this, now the State Government can prohibit sale of lottery tickets of every other State within its

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territory. Next, Section 6 seeks strict compliance with Section 4. Under this the Central Government may prohibit any State lottery which is being conducted in contravention of the conditions as laid down under Section 4 or Section 5. Section 7 shows the rigour of this Act by making it a penal offence as against all, who violate the provisions of this Act, be it the Head of the Department of the Government or the agent, promoter or trader, to be punishable with two years' rigorous imprisonment. Section 8 makes such an offence cognizable and non-bailable. Similarly, Section 9 deals with offences committed by the companies. Section 10 entrusts the Central Government power to give directions to the State Government for carrying into execution the provisions of this Act, Rule or Order. Sections 11 and 12 are the rule-making power entrusted to the Central and the State Governments respectively. Section 13 repeals the Ordinance. Thus, the whole Act makes clear that the subject it is dealing with is gambling in nature. The object of the Act is not to control the policy decision of each State to start or to close its lotteries, but to regulate it in case a State decides to run its own lottery through modalities and conditions laid down therein. Emphasis of the whole Act is to abide by the conditions strictly if you want to run a lottery. Thus, regulation is through conditions to eliminate even the remotest possibility of malpractices by providing stringent measures for its compliance. Perusal of the Act reveals, the scheme of the Act is limited in its application, and it admits the subject it is dealing is gambling in nature. As we have said, the decision to collect or not to collect revenue through State lotteries is exclusively within the policy decision of the State and for this, neither the Union nor Parliament interferes nor is there any indication under the Act. Thus, the question which remains is, if any State decides that it does not want any lotteries but if it feels helpless as having no jurisdiction over the lotteries organised by other States, what is the way out? This can only be done by Parliament or by entrusting this power on such State desiring so, which has been done through Section 5. In this background, for this helplessness of a State as recorded in *Anraj Case-I* the remedy is provided by entrusting this power on the State under the impugned provision. This helps such State to

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achieve its objective of lottery (gambling)-free zone within its territory. A well-concerned remedy. Next question is what could have been the guideline? If State lotteries are gambling and it cannot be termed as "trade and commerce" at common parlance for any free right under the Constitution. Such right though recognised under Article 298 so other States may continue to enjoy till prohibited by valid law, and if any State wants within its State lottery-free zone and for which the power is entrusted to such State, it cannot be said in this setting and background and the nature of the subject that such a delegation is of its essential legislative power. The only guideline necessary in such delegation is to see that the State does not pick and choose one State from the other, which guideline is already provided in this section. It provides that such a ban could only be if it is applied to every other State. The only residual field of attack so far as this delegation could be, which has been attacked in this case, that the State could on one hand ban lotteries of every other State but run its own lotteries. It is argued that while a State bans lotteries of other States not to permit any gambling activity in the public interest as a policy but this very public interest is flouted by having lotteries of its own. It is true that unless this provision is read down to mean a State can only ban lotteries of other States when it bans as a policy its own lotteries it is bound to be subjected to the vagaries as pointed out and on deeper scrutiny it may not successfully stand. But by reading down the provision, which has to be read that it is only that State which decides lottery-free zone within its State can prohibit lotteries of other States clearly provides the guidance for the exercise of such a power. It is inbuilt and inherent in the provision itself in view of the scheme of the Act and nature of subject in issue. If interpretation as given on behalf of the State of Tamil Nadu is accepted that delegation of power is absolute, then the submission that such delegation is unbridled without any guideline carries great weight. Submission for the State of Tamil Nadu is that the lotteries may be prohibited in phases, viz., while running its own lotteries yet prohibiting other lotteries, may be as a public policy, for law and order, for political reasons, morality, etc. For surviving such an interpretation given by Mr. Ganguli, Parliament should have

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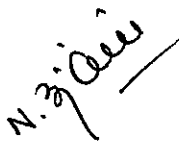
provided some guidelines. Such an interpretation falls into the trap of the submission that the delegation is unbridled. So if there are two interpretations, the interpretation which upholds the validity should be accepted. So the interpretation as given by Mr. Ganguli cannot be accepted.”

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.....

“So, whenever a State decides to run or not to run its lotteries it is the State which has to decide as a public policy in the public interest. Once such a decision is taken to have in its State lottery-free zone, the entrustment of power by Parliament cannot be said to be ultra vires.

We find on plain reading of Section 5, it empowers the State Government within its State to prohibit the sale of tickets of the lotteries organised by every other State. There is also nothing in the language reading by itself so as to say, whether such power can be exercised by the State while running its own lottery or can be exercised only where such State does not run its own lottery. This leads to two possible interpretations, as referred to above. In view of settled principle of interpretations, the interpretation given by the Union to read down the provision has substance. This would mean that the State could only exercise such discretion if it decides not to have any lottery within its territory including its own lottery. In this situation, the delegatee is tied down by this limitation which itself is a clear guide to a State hence cannot be said to be unbridled delegation. So even to the first part it cannot be said to be arbitrary or unbridled. So, we have no hesitation to approve the interpretation given by the Union to uphold the validity of Section 5.”

In my considered view, the impugned notification dated 8<sup>th</sup> January 2003 was issued by the respondent-State of Tamil Nadu in terms of provision of Section 5 of the Act of 1998

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read with the laws laid down by the Apex Court in **B. R. Enterprises v. State of U.P. (Supra)**,

**11.** The writ petitioners in the instant case could not highlight or prove the fact that the State of Tamil Nadu is not a lottery-free zone State. Mr. V. Raghupatti, learned Government Pleader submitted that the State of Tamil Nadu is not organising or conducting or promoting any lottery of its own and as such it is a lottery-free zone State and that being the position the State of Tamil Nadu can prohibit the sale of lottery tickets within its territory of all lotteries organised, conducted or promoted by every State including the State of Tamil Nadu under the impugned notification.

I am in full agreement with the submission advanced by the learned Government Pleader of the State of Tamil Nadu. However, it is made clear that in future if the State of Tamil Nadu organise, conduct or promote a lottery/lotteries in terms of the provisions of the Act of 1998 and rules framed therein, the State of Tamil Nadu and its authorised agents or authorities shall not prohibit the sale of lottery tickets organised, conducted or promoted by the State of Sikkim within the territory of the State of Tamil Nadu. In other words, the State of Sikkim or its authorised agents shall be at

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liberty to sale its own State lottery tickets within the territory of the State of Tamil Nadu as and when the State of Tamil Nadu organise, conduct or promote a lottery of its own State.

**12.** For the reasons, observations and discussion made above, the writ petition is finally disposed of, but no order as to costs. The earlier ad-interim orders passed in this case are hereby merged with this judgment.

*N. S. Singh*  
*(N. S. Singh)*  
*Judge*  
**21-07-2003**