

J. K. Bharati

Vs

State of Maharashtra and Others

Civil Writ Petition (Civil) No. 12820 of 1984 with Writ Petitions Nos. 12592, 12714, 12736, 12747, 12821, 13035 and 13022 of 1984

(A. P. Sen, O. Chinnappa Reddy, E. S. Venkataramiah JJ)

23.07.1984

JUDGMENT

CHINNAPPA REDDY, J. -

1. This order is virtually a postscript to our judgment in H. Anraj v. State of Maharashtra. What was in question in Anraj v. State of Maharashtra was the ban imposed by the Government of Maharashtra on the sale of tickets of lotteries conducted by the Government of other States in the State of Maharashtra. What is presently in question in the writ petitions before us is the ban on the sale of tickets of lotteries authorised but not organised by the Governments of other States. Specifically, we are concerned with the ban on sale, within the State of Maharashtra, of tickets of lotteries organised by the Indian Red Cross society, Dadra and Nagar Haveli branch and authorised by the administration of Dadra and Nagar Haveli. In Anraj v. State of Maharashtra we held that the subject "Lotteries organised by the Government of India or the Government of a 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 298 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 parliamentary 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 State 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 Governments. 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.

2. The Bombay Lotteries [Control and Tax] and Prize Competition [Tax] Act, 1958 is an Act to control and tax lotteries and prize competition in the State of Maharashtra. Section 3 of the Act

declares : "Save as provided by the Act, all lotteries are unlawful". The Act contains detailed provisions for the licensing, regulation and control of lotteries within State of Maharashtra. By Section 32[c], it is provided that nothing in the Act shall apply to "a lottery specially authorised by the State Government". The submission of Dr. Chitale, learned counsel for the petitioners was that the exemption from the applicability of the Act granted to lotteries "specially authorised by the State Government", that is, by the Government of Maharashtra, laws discriminatory", the exemption should be extended to all lotteries authorised by the Government of any State whatsoever. Article 14 of the Constitution is invoked in aid of the submission. The reason for exempting lotteries authorised by the Government of Maharashtra from the applicability of the Act and not lotteries authorised by the Governments of other States is patent. In the case of lotteries authorised by the Government of Maharashtra, the Government of Maharashtra may retain to itself all necessary powers for the regulation and control and the prevention of misuse of funds and exploitation of guileless members of the public. In the case of lotteries authorised by the Governments of other States it may be difficult and even impossible for the Government of Maharashtra to take adequate regulatory steps to prevent abuse of the authority given by Governments of other States to non-governmental agencies to organise lotteries. It may be equally difficult for the Governments of other States to take adequate measures for prevention of abuse of such authority within the state of Maharashtra. We are, therefore, satisfied that no hostile discrimination whatever is involved in not extending the exemption from the applicability of the Act to lotteries authorised but not organised by the Governments of other States. The writ petitions are accordingly, dismissed with costs.

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