

SUPREME COURT OF INDIA

All Kerala Online Lottery Dealers

Vs.

State of Kerala & Ors.

C.A.No.3518 of 2007

(H.L.Dattu,CJI., R.K.Agrawal and Arun Mishra,JJ.,)

05.11.2015

JUDGMENT

R.K.Agrawal,J.,

1. These appeals are directed against the common final judgment and order dated 23.05.2006 passed by the Division Bench of the High Court of Kerala at Ernakulam in Writ Appeal Nos. 2011, 2012 and 2235 of 2005 whereby the High Court dismissed the appeals filed by the appellants herein against the judgment and order dated 27.07.2005 passed by learned single Judge of the High Court in Writ Petition (C) Nos. 14495, 16063 and 19582 of 2005.

2. Brief facts:

“(a) The State of Kerala, by notification dated 13.01.2005, issued in exercise of the power conferred by Section 5 of the Lotteries (Regulation) Act, 1998, (in short ‘the Act’), prohibited the sale of all computerized and online lottery tickets marketed and operated through vending machines, terminals, electronic machines and tickets sold through internet in the State with immediate effect and declared that Kerala shall be a free zone from online and internet lotteries.

(b) By a subsequent notification dated 27.01.2005, the State of Kerala decided to prohibit the sale of all lotteries organized, conducted or promoted by the State as well as by every other State Government in the State of Kerala with immediate effect and declared that the State shall hereafter be a Lottery Free Zone.

(c) The State of Kerala, in partial modification of the notification dated 27.01.2005, issued a subsequent notification dated 22.04.2005, permitting the sale of paper lotteries organized, conducted or promoted by every State Government including the State of Kerala and the prohibition imposed on the sale of computerized and on-line lottery tickets organized, conducted or promoted by every State Government

continued to remain in force declaring the territory of the State of Kerala to be online, internet and computerized lotteries free zone.

(d) Being aggrieved by the notification dated 22.04.2005 discriminating between the paper lotteries and online lotteries, the All Kerala Online Lottery Dealers Association, State of Sikkim and one Sreekala and others filed Writ Petition (C) Nos. 19582, 14495 and 16063 of 2005 respectively before the High Court.

(e) A learned single Judge of the High Court, by judgment and order dated 27.07.2005, dismissed the writ petitions.

(f) Being aggrieved by the decision of the learned single Judge, the petitioners therein preferred Writ Appeal Nos. 2011, 2012 and 2235 of 2005 before the Division Bench of the High Court.

(g) The Division Bench, by a common judgment and order dated 23.05.2006, dismissed the appeals.

(h) Against the said order, the appellants have preferred these appeals by way of special leave before this Court.

Writ Petition (C) Nos. 641 of 2007 and 233 of 2010

(a) One Bibhash Karmakar-the petitioner herein has filed the above petitions in public interest alleging that the States of Sikkim, Nagaland and Goa are running lottery business contrary to the provisions of the Act which is detrimental to the society as a whole.

(b) This Court, by order dated 27.11.2009 in Writ Petition (C) No. 641 of 2007, directed the State to explain as to whether the State of Sikkim is running lottery business contrary to the provisions of Section 4 of the Act. In response to the above, the State Government filed an affidavit dated 10.12.2009 before this Court denying all the irregularities as claimed by the petitioner herein and cited various provisions of the Act as well as the Sikkim Online Network Lottery Rules, 2001 to show that the lottery business in the State is in consonance with the pre-existing rules and regulations.

(c) This Court, by order dated 21.06.2010, tagged Writ Petition (C) No. 233 of 2010 with Writ Petition (C) No. 641 of 2007.”

3. Heard the arguments advanced by learned senior counsel for the parties and perused the records. Since a common question of law and facts arise in these appeals and petitions, they are being disposed of by this common judgment.

Points for Consideration:

4. The sole question for consideration before this Court is whether the State Government can discriminate between the paper lottery and online lottery in pursuance of the provision of Section 5 of the Act. Rival Submissions:

5. Learned senior counsel for the appellants contended before this Court that online lottery is also a lottery, as defined under Section 2(b) of the Act. So, if the State Government intends to prohibit the same, it has to prohibit all the lotteries whether paper or online. The selective prohibition of the sale of online lottery tickets is impermissible, in the light of Section 5 of the Act, as interpreted by this Court in B.R. Enterprises vs. State of U.P. and Others (1999) 9 SCC 700. The distinction drawn by the State Government between paper lottery and online lottery is discriminatory and violative of Article 14 of the Constitution of India. Learned senior counsel further contended that the impugned notification is vitiated by mala fides. It was further alleged that the State Government is being controlled by the paper lottery mafia and under its influence the sale of online lottery tickets has been prohibited. The State Government does not have the competence to issue the impugned notification. Though the State Government is competent to legislate on lotteries by virtue of Item 34 of List II concerning betting and gambling, the power to legislate on lotteries organized by the Government of India or the Government of a State is the exclusive preserve of the Parliament by virtue of Entry 40 of List I of the Seventh Schedule. So, the State Government, which is incompetent to legislate on lotteries run by other States, has no power to issue the impugned notification. The State Government, without legislative competence, has ventured to prohibit online lottery which is totally fraudulent and colourable exercise of the power.

6. Learned senior counsel for the appellants further pointed out that the contention that online lottery was not in the contemplation of the Parliament or the Court, cannot be accepted. The Act has to be interpreted to adapt it to the changing times. According to learned senior counsel, the Parliament was well aware about the growing advancement of science and technology and the use of electronic media in future days to come and, therefore, when it defined 'lottery' under Section 2(b) of the Act, it included also the online lottery or internet lottery which may come into existence in future. It was further submitted that the provision contained in Section 5 of the Act would empower the State Government to prohibit the sale of tickets of all the lotteries and it cannot be restricted only to online or internet lotteries. He further submitted that if it is to be taken that the online lottery is a class of lotteries for which the State Government is empowered to prohibit then it is only the Parliament which can classify the same and the State of Kerala has no power to do so. According to him, the Central Government framed the Lotteries (Regulation) Rules, 2010 (in short 'the Rules') under sub-section (1) of Section 11 of the Act and defined online lotteries under Rule 2(e) of the Rules that too for the first time in the year 2010, therefore, the State Government had no right or jurisdiction to prohibit the online lottery in the year 2005. The principles laid down in B.R. Enterprises (supra) will apply to all types of lotteries and a judgment of this Court cannot be ignored merely by saying that it failed to consider some point or other.

7. Learned senior counsel further contended that this Court, in *B.R. Enterprises (supra)*, has read down Section 5 of the Act, to save it from the vice of unconstitutionality, emanating from conferring unbridled power on the State, which may be termed as abdication of the essential legislative function, by failing to provide guidelines for the exercise of that power. In the said decision, in paragraphs 84 and 87, it was held as follows:

“84. In Section 2(b) lotteries are defined to be a Scheme for distribution of prizes by a lot or chance. This definition itself recognizes 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 organized 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 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 organized by every other State. If a State desires not to subject its people to the lottery gambling, it has no power to restrict lotteries organized 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 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 is 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 organized 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 [(1984) 2 SCC 292] the remedy is provided by entrusting this power on the State under the impugned provision. This helps such State to 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 terms as 'trade and commerce' at common parlance for any free right under the Constitution. Such right though recognized 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 provided some guidelines. Such an interpretation falls into the trap of the submission that this 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.

87. 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 organized 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 delegate 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.” Relying on the above quoted paragraphs, learned senior counsel for the appellants vehemently contended that the State shall either prohibit the sale of all lotteries or allow the sale of all lotteries in the State. Selective prohibition of a particular type of lottery is impermissible in the light of the above binding judgment.

8. In support of this submission learned senior counsel apart from the decision in *B.R. Enterprises (supra)* relied on the following decisions, viz., *The Senior Electric Inspector and Others vs. Laxmi Narayan Chopra and Others*¹ *State (Through CBI/New Delhi) vs. S.J. Choudhary*² and *SIL Import, USA vs. Exim Aides Silk Exporters, Bangalore*³

9. The learned senior counsel for the State of Kerala-the respondent herein supported the impugned notification by contending that the State Government is competent to prohibit a particular type of lottery. There is no fetter on the power of the Government under Section 5. Learned senior counsel further submitted that when the Parliament enacted the Act in the year 1998, there was nothing before it to presume that in times to come online lotteries will also come into existence apart from the paper lotteries and, therefore, the provision of Section 5 which empowers the State Government to prohibit the sale of tickets of a lottery organized, conducted or promoted by every other State necessarily relate to paper lottery. Even otherwise, online lottery is different from paper lottery and can be treated as a class in itself. The State Government is, therefore, empowered under Section 5 of the Act to prohibit the sale of online lotteries or internet lotteries in its State. He further submitted that the Central Government itself treated online lotteries as a different class in itself and, therefore, framed the Rules providing the rules and regulations for organizing paper lottery or online lottery or both subject to certain terms and conditions. Thus, the intention of the Parliament was to treat paper lotteries and online lotteries a different class. The decision in *B.R. Enterprises (supra)* would therefore necessarily be understood to relate to paper lotteries only. The said decision cannot be construed as a precedent. So, the declaration of law, made therein, is not applicable to online lotteries. It is also submitted that prohibition of sale of online lotteries has been made bona fide and the classification is reasonable and not arbitrary. Learned senior counsel further submitted that the scheme of Section 4 would show that the Act was framed with a view to deal with paper lotteries which were in vogue at that point of time whereas the distributors of online lotteries do much more than selling the tickets. They decide and implement the lottery schemes, provide infra- structure and technology, print lotteries and participate in the conduct of draws. Section 4(h) of the Act prohibits holding of draws, more than once in a week. This restriction has been made taking into account the conduct of paper lotteries. But, in online lotteries, 70 to 100 draws are made every day in a week. On the above grounds the respondents prayed for dismissal of the appeals.

Discussion:

10. Before going into the validity of the impugned notification, it is fruitful to refer to certain provisions of the Act. The relevant portion of the Statement of Objects and Reasons for framing this legislation is as under:

“The conduct of certain types of lottery trade in the country, the malpractices thereof and their impact on the poorer sections of the society has been under scrutiny of the Government for quite some time. The continued prevalence of the popularly known single digit and instant lotteries and the temptation offered by them proved to be the undoing of many families, especially poor daily wagers and low income groups. In spite of the guidelines issued by the Central Government over a period of time as also the guidelines issued in the recent past by the Honourable Supreme Court. In the matter, the evil has not been totally eliminated and it is felt that a Central legislation to regulate the conduct of lotteries is necessary to protect the interest of the gullible poor.”Section 2(b) defines ‘lottery’ which reads as follows: “2 (b) ‘lottery’ means a scheme, in whatever form and by whatever name called, for distribution of prizes by lot or chance to those persons participating in the chances of a prize by purchasing tickets.”

3. Prohibition of lotteries.—Save as otherwise provided in Section 4, no State Government shall organize, conduct or promote any lottery.

Section 4 enumerates the conditions, subject to which a State Government may organize, conduct or promote a lottery, which reads as follows: “4. Conditions subject to which lotteries may be organized etc.:— A State Government may organize, conduct or promote a lottery, subject to the following conditions, namely:—

“(a) prizes shall not be offered on any pre-announced number or on the basis of a single digit;

(b) the State Government shall print the lottery tickets bearing the imprint and logo of the State in such manner that the authenticity of the lottery ticket is ensured;

(c) the State Government shall sell the tickets either itself or through distributors or selling agents;

(d) the proceeds of the sale of lottery tickets shall be credited into the public account of the State;

(e) the State Government itself shall conduct the draws of all the lotteries;

(f) the prize money unclaimed within such time as may be prescribed by the State Government or not otherwise distributed, shall become the property of that Government;

(g) the place of draw shall be located within the State concerned;

- (h) no lottery shall have more than one draw in week;
- (i) the draws of all kinds of lotteries shall be conducted between such period of the day as may be prescribed by the State Government;
- (j) the number of bumper draws of a lottery shall not be more than six in a calendar year;
- (k) such other conditions as may be prescribed by the Central Government.”

5. Prohibition of sale of ticket in a State.—A State Government may, within the State, prohibit the sale of tickets of a lottery organized, conducted or promoted by every other State.

6. Prohibition of organization etc., of lottery.—The Central Government may, by order published in the Official Gazette, prohibit a lottery organized, conducted or promoted in contravention of the provisions of Section 4 or where tickets of such lottery are sold in contravention of the provisions of Section 5.

7. Penalty.—(1) Where a lottery is organized, conducted or promoted after the date on which this Act receives the assent of the President, in contravention of the provisions of this Act, by any Department of the State Government, the Head of the Department shall be punishable with rigorous imprisonment for a term which may extend to two years or with fine or with both:

“Provided that nothing contained in this section shall render such Head of the Department liable to any punishment if he proves that the contravention was committed without his knowledge or that he exercised all due diligence to prevent the commission of such contravention.

(2) Notwithstanding anything contained in sub-section (1), where a contravention under this Act has been committed by a Department of Government and it is proved that the contravention has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any officer, other than the Head of the Department, such officer shall also be deemed to be guilty of that contravention and shall be liable to be proceeded against and punished accordingly.

(3) If any person acts as an agent or promoter or trader in any lottery organized, conducted or promoted in contravention of the provisions of this Act or sells, distributes or purchases the ticket of such lottery, he shall be punishable with rigorous imprisonment for a term which may extend to two years or with fine or with both.”

8. Offences to be cognizable and non-bailable.—The offence under this Act shall be cognizable and non-bailable.”

11. From the above provisions, it can be seen that the tickets of a State- run lottery shall be printed by the State itself. Sale of tickets alone is permitted through the agents or through distributors. The entire sale proceeds have to be credited in the public account of the State. Draws of all the lotteries have to be conducted by the State Government. No lottery can have more than one draw in a week. Bumper draws shall not be more than six in a calendar year. The cumulative effect of sub-sections (h) and (j) appears to be that a State can run only 52 ordinary lotteries and six bumper lotteries in a year. Section 5 empowers the State Government to prohibit the sale of tickets of lotteries organized, conducted or promoted by every other State Government. Section 6 empowers the Central Government to prohibit the conduct of lotteries, which are in violation of the provisions of Section 4 or which are sold in contravention of the prohibition imposed by the State Government under Section 5. Section 7 provides the penalty for running a lottery in violation of the provisions of the Act. The Head of the Department and other officers responsible for the conduct of the lottery shall be punished with imprisonment, which may extend to two years or with fine or with both. Similar punishment can be imposed on those who sell or purchase the tickets of such a lottery. Section 8 makes the offences under the Act cognizable and non-bailable. Cognizable offence means an offence for which a police officer may arrest the accused without warrant (Section 2(c) of the Code of Criminal Procedure, 1973 (in short 'the Code'). In this background, it is also relevant to quote Section 4 of the Code which reads as follows: "4. Trial of offences under the Indian Penal Code and other laws:- (1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained. (2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences." Since no provision is made for investigating the offences under the Act, the provisions under the Code will apply to its investigation, by virtue of Section 4(2) of the Code quoted above.

12. It is also relevant to mention the Notifications issued by the State Government from time to time.

"Government of Kerala Reg. No. KL/TV(N)/12/2003-2005

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GOVERNMENT OF KERALA
Taxes (H) Department

NOTIFICATION
G.O.(P) No. 4/2005/TD dated, Thiruvananthapuram, 13th January, 2005.

S.R.O. No. 34/2005 - In exercise of the powers conferred by Section 5 of the Lotteries (Regulation) Act, 1998 (Central Act 17 of 1998), the Government of Kerala hereby prohibit the sale of all Computerised and Online lottery tickets marketed and operated through vending machines, terminals, electronic machines and tickets sold through Internet in Kerala, with immediate effect and declare that Kerala shall be the free zone from Online and Internet By order of the Governor. P. MARA PANDYAN, Secretary to Government Explanatory Note (This does not form part of the Notification, but is intended to indicate its general purport). Government have decided to prohibit the sale of computerized and online lottery tickets in the State of Kerala with immediate effect This notification is intended to achieve the above object.” “Government of Kerala Reg. No. KL/TV(N)/12/2003-2005 KERALA GAZETTE EXTRAORDINARY PUBLISHED BY AUTHORITY Vol.L Thiruvananthapuram 27th January, 2005 7th Magga 1926 GOVERNMENT OF KERALA Taxes (H) Department NOTIFICATION G.O.(P) No. 11/2005/TD dated, Thiruvananthapuram, 27th January, 2005. S.R.O. No. 73/2005 - WHEREAS Notification II G.O. (P) No. 4/2005/TD dated 13th January, 2005 published as S.R.O. No 34/2005 in Kerala Gazette Extraordinary No. 77 dated the 13th January, 2005 prohibiting the sale of computerized and online lottery tickets in the State of Kerala has been issued under Section 5 of the Lotteries Regulation Act, 1998 (Central Act 17 of 1998).

AND WHEREAS the Government of Kerala have decided to prohibit the sale of all lotteries organized, conducted or promoted by the State of Kerala with immediate effect. AND WHEREAS the Government of Kerala have decided to prohibit the sale of tickets of all lotteries organized, conducted or promoted by every other State Government also; NOW THEREFORE, in exercise of the powers conferred by Section 5 of the Lotteries (Regulation) Act, 1998 (Central Act 17 of 1998) and all other powers enabling for it, the Government of Kerala hereby prohibit the sale of tickets of all lotteries organized, conducted or promoted by every other State Government including lotteries organized, conducted or promoted by the Government of Kerala in the State of Kerala with immediate effect and declare that the State of Kerala shall hereafter be a Lottery Free Zone.By order of the Governor. P. MARA PANDYAN, Secretary to Government Explanatory Note (This does not form part of the Notification, but is intended to indicate its general purport). Government of Kerala have decided to make the State of Kerala a Lottery Free Zone. This notification is intended to achieve the above object. II G.O.(P) No.11/2005/TD dated, Thiruvananthapuram, 27th January, 2005.

S.R.O.No. 74/2005, - In exercise of the powers conferred by subsections (1) and (2) of section 12 of the Lotteries (Regulation) Act, 1998 (Central Act 17 of 1998), the Government of Kerala hereby make the following rules to repeal the Kerala State Lotteries (Regulation) Rules, 2003 issued in G.O.(P) No. 118/2003/TD dated the 16th July, 2003 and published as S.R.O.No 646/2003 in the Kerala Gazette Extraordinary No. 1278 dated the 16th July, 2003, as amended subsequently, namely:-

Rules

1. Short title, application and commencement:- (1) These rules may be called the Kerala State Lotteries (Regulation) (Repeal) Rules, 2005.

2. These rules shall apply to the whole of the State of Kerala.

3. They shall come into force at once.

2. Repeal:- The Kerala State Lotteries (Regulation) Rules, 2003 is hereby repealed. By order of the Governor. P. MARA PANDYAN, Secretary to Government Explanatory Note (This does not form part of the Notification, but is intended to indicate its general purport). Government of Kerala by notification issued as G.O.(P)No.11/2005/TD dated 27th January, 2005 and published as S.R.O.No 73 in Kerala Gazette Extraordinary No. 169 dated 27th January, 2005 has prohibited the sale of lottery tickets organized, conducted or promoted by the Government of Kerala. Accordingly the Kerala State Lotteries (Regulation) Rules, 2003 has to be repealed. This notification is intended to achieve the above object.” “Government of Kerala Reg. No.KL/TV(N)/12/2003-2005 KERALA GAZETTE EXTRAORDINARY PUBLISHED BY AUTHORITY Vol.L Thiruvananthapuram 22nd April, 2005 2nd Vaisakha 1927 GOVERNMENT OF KERALA Taxes (H) Department NOTIFICATIONS G.O.(P) No. 382/2005/TD dated, Thiruvananthapuram, 22nd April, 2005. S.R.O. No. 73/2005 - WHEREAS Notification II G.O. (P) No. 4/2005/TD dated 13th January, 2005 published as S.R.O. No. 34/2005 in Kerala Gazette Extraordinary No. 77 dated the 13th January, 2005 prohibiting the sale of computerized and online lottery tickets in the State of Kerala. AND WHEREAS, by Notification No. I issued as G.O. (P)No.11/2005/TD dated 27th January, 2005 and published as S.R.O.No. 73 in the Kerala Gazette Extraordinary No. 169 dated the 27th January, 2005, the Government of Kerala prohibited the sale of tickets of all lotteries organized, conducted or promoted by every State Government including that of State of Kerala and declared the State as a Lottery Free Zone. NOW THEREFORE, in exercise of the powers conferred by Section 5 of the Lotteries (Regulation) Act, 1998 (Central Act 17 of 1998) and in partial modification of the Notification issued as S.R.O. No. 73/2005 dated the 27th January, 2005, the Government of Kerala hereby lift the prohibition partially by permitting the sale of paper lotteries organized, conducted or promoted by every State Government including the State of Kerala provided that the prohibition imposed on the sale of computerized and online lottery tickets organized, conducted or promoted by every State Government shall continue to remain in force and the territory of the State of Kerala shall be online, internet and computerized lotteries free zone.

By order of the Governor.

P. MARA PANDYAN, Secretary to Government Explanatory Note (This does not form part of the Notification, but is intended to indicate its general purport). Government of Kerala by notification issued as G.O. (P) No. 66/2005/TD dated 20th April, 2005, have reconsidered the issue of the prohibition imposed on the sale of all Lottery Tickets in the State of Kerala and have decided to reintroduce Paper Lottery conducted by the State Government with the

same pattern and prize Structure as it prevailed before 27th January, 2005.” From a perusal of the Notification dated 13.01.2005, issued by the Government of Kerala, we find that the State had prohibited the sale of all computerized and online lottery tickets marketed and operated through vending machines, terminals, electronic machines and tickets sold through internet in Kerala. However, by notification dated 27.01.2005, the State had prohibited the sale of tickets of all lotteries in the State of Kerala. Vide notification dated 27.01.2005, the Government of Kerala made the Kerala State Lotteries (Regulation) (Repeal) Rules, 2005 which repealed the entire Kerala State Lotteries (Regulation) Rules, 2003. Vide another notification dated 22.04.2005, the Government of Kerala lifted the prohibition of sale of paper lotteries organized, conducted or promoted by every State Government including the State of Kerala. However, the prohibition imposed on the sale of computerized and online tickets continued to remain in force.

13. In the 2010 Rules, framed by the Central Government, online Lottery has been defined under Rule 2(1)(e) which is as under- “‘online lottery’ means a system created to permit players to purchase lottery tickets generated by the computer or online machine at the lottery terminals where the information about the sale of a ticket and the player’s choice of any particular number or combination of numbers is simultaneously registered with the central computer server;” Rule 3 permitted the State Government to organize a paper lottery or online lottery or both subject to the conditions specified in the Act and these rules. Thus from the Rules, it is clear that online lottery is being treated as a separate lottery from paper lottery and it is a class in itself.

14. In the case on hand, we are mainly concerned with the provisions of Section 5 and Section 6 of the Act. These two Sections cover different fields. Section 5 deals with prohibition of sale of tickets, whereas Section 6 deals with prohibition of conduct of the lottery itself. So, Section 5 enables the State Government to prohibit the sale of tickets of lotteries run by every other State Government. The grounds on which prohibition of sale of tickets can be made are not detailed under Section

“5. But, the same can be gathered from other provisions of the Act and also by reference to the Object and Scheme of the Act. Going by the scheme of the Act, it appears that violation of any of the conditions contained in Section 4 could be a ground for the State Government to prohibit the sale of tickets of a particular lottery, organized, conducted or promoted by any other State Government. If the State Government thinks it fit, it may prohibit the sale of all lottery tickets in the State and make it a lottery free zone. Section 6 empowers the Central Government to prohibit a lottery run by the State Government. The Central Government can prohibit the running of a lottery by a State Government if it is found that the same is in violation of the provisions of Section 4. The Central Government can also prohibit the running of a lottery if it is found that the tickets of that lottery are sold in a State, where the sale of the same has been prohibited by the concerned State Government under Section 5.

15. In view of the above, it is relevant to mention Entry 40 under List I and Entry 34 in List II of the Seventh Schedule and Article 246 of the Constitution of India which are as under:-
Entry 40 List I-Union List “40. Lotteries organized by the Government of India or the Government of a State.” Entry 34 List II-State List “34.Betting and Gambling.” Article 246 of the Constitution “246. Subject matter of laws made by Parliament and by the Legislatures of States.—

“(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the “Union List”).

(2) Notwithstanding anything in clause (3), Parliament and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the “Concurrent List”). (3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the “State List”). (4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.” It is common case that the Parliament, by virtue of Entry 40 under List I of the Seventh Schedule, has got exclusive power to legislate on State lotteries,. By virtue of Entry 34 in the State List, concerning betting and gambling, State Legislatures have the power to legislate on lotteries, other than State Lotteries because it is also one of the forms of gambling”

16. The State of Sikkim, in its trading capacity, has been organizing, conducting and promoting online lotteries in accordance with the provisions of the Act and lottery tickets are being sold in various lottery playing States in India including the State of Kerala. The State of Sikkim, as pleaded before this Court, substantially depends on the revenue raised by the sale of lottery tickets. It is a north eastern State with no avenues of industrialization. It is the case of the appellants that they started the business of online lottery in the State of Kerala in the year 2003. Online lottery is a tamper proof lottery which has been designed using the aid of modern technology that eliminates all the ills of paper lottery and has greater transparency and is universally recognized as a tamper proof and safe method of conducting lotteries. Modernization led to spurt of computerization, satellite and internet connectivity which bears a great impact on every aspect of life, made things easier and faster and brought in more transparency. Thus began lottery in another form, popularly called “online lottery.” The difference in the lotteries of this form is that “online” is free from possibility of any duplication, tamper etc., and is totally transparent.

17. Online lotteries became popular in our country, only recently. It made their presence felt in India from 2000-2001 onwards. Though all types of lotteries are meant to be covered by the Lotteries (Regulation) Act, 1998, the deleterious effect of paper lotteries was uppermost in the mind of the Central Government while bringing forth the above legislation as, at the

relevant time, paper lotteries were most popular among the people. The various sub-sections of Section 4 will reveal that the irregularities in the conduct of paper lotteries were mainly in the contemplation of the Parliament. The decision in B.R. Enterprises (supra) also dealt with the prohibition of sale of tickets of paper lotteries invoking power under Section 5 of the Act. Still, the general principles laid down by this Court in the abovementioned case, while interpreting Section 5, are binding. So, the power to prohibit sale of tickets is granted in relation to a particular lottery or particular type of lottery. That means, a particular lottery can be the subject-matter of prohibition. In other words, all types of lotteries need not be prohibited. But, going by that decision, a particular type of lottery can be prohibited, if only, the State Government also does not run that lottery. The online lottery is a particular lottery, which is not run by the State Government. So, going by the principles laid down in B.R. Enterprises (supra), the State Government can separately ban the sale of online lotteries as online lottery is a particular class of lottery, different and distinct from paper lotteries.

18. Learned counsel for the appellants also brought into notice para 21 of the Writ Petition filed before the High Court to show how the system of online lottery functions, which is as under:

“The Online lottery involves installation of a Central Server, various terminals, which are connected to the said Central Server through a satellite and all this involves huge expenses running into hundred of crores. In this online lottery form, there are no pre-printed tickets as such. A person interested to purchase a ticket of online lottery comes to the terminal, fills a play-slip with numbers selected by him and hands it over to the person manning the terminal. This play-slip is put into the terminal and numbers selected by the player are transmitted to the central server, which registers the said numbers. A person may not like to select any numbers and may play lucky dip in which case the computers makes random generation of numbers itself and transmit them to the central server, which registers the said numbers. In either of the cases after the central server has registered the numbers, it generates a ticket and commands the terminal, which acts like a fax on command and delivers the ticket, which is on an imported thermal paper. The ticket besides containing these numbers contains various codes, details as also bar codes, which ensures against any possibility of any duplication etc. The game is made more interesting and entertaining since the player has option to choose numbers for himself. Like paper lottery in this case also various tickets can be printed and sold as such, however, the same may not sell at all because the player does to like to lose the charm of selecting the numbers himself. However, whatever be the position, all the details regarding the number of tickets sold, their respective playing numbers, the number to tickets sold from each terminal etc. are all available in the central server. The generation of tickets for any particular scheme closes 30 minutes before the holding of the draw and no retail terminal can generate a ticket for such draw after such closing and at the time of draw all the details are readily available to the authorities immediately before the draw. The draw is held by the respective State themselves through a tamper free machine and is telecast on the Zee Television Network and watched by the public at large.”

19. It was also contended before this Court that in exercise of the powers conferred by Section 5 of the Act and in partial modification of the notification issued earlier declaring Kerala a lottery free zone State, the Government lifted the prohibition partially by permitting the sale of paper lotteries and the prohibition imposed on the sale of computerized and online lotteries continued to remain in force declaring the territory of Kerala to be online, internet and computerized lottery free zone. The legislative competence in respect of State run lotteries vests exclusively with the Centre except where a State is a lottery free State and that only the Central Government will have the power to deal with the same. The notification dated 22.04.2005 was issued by the State on the ground that the State of Kerala shall be an online lottery free zone.

20. The State of Kerala is of the view that online lottery and conventional paper lotteries are to be dealt separately and are entirely different in every aspect by the nature and features inherent in it. The State of Kerala is of the view that online lottery does not characterize the features of a lottery as defined under the Act. In fact, the so-called online lottery is not a lottery as it is a widespread network using internet, cheating the public in a massive way in the absence of a proper regulatory system of the same standards. The online companies are merely 'gaming', but not conducting any lottery as per the guidelines issued under the Act. It is further pleaded that though it is claimed that online lotteries are universally recognized as tamper proof lotteries, in experience, it is felt that the so-called online lotteries were cheating the massive gullible public by misusing the advancement of information technology in the field of economy. The Government of Kerala has detected and established before the Union Government that online lotteries organized by the State of Sikkim are blatantly violating the provisions of Section 4 of the Act. It was further contended that the Central Act was enacted by the Parliament on 07.07.1998. At the time of formulating the Act, only conventional paper lottery was being conducted in the country. No online lottery existed at the time of enactment of the Act. The Central Act did not envisage or took into account the online lotteries in the definition clause while stipulating conditions under section 4 of the Act for organizing, conducting or promoting a lottery by a State Government. The conditions stipulated therein are only intended to cover the conduct of paper lotteries. The Government of Kerala has detected the flagrant violations and fraud inherent in the online lotteries and also the illegal activities of the appellants which directly affects more than 15 lakhs people of Kerala who have already been deceived and are being continuously cheated on minute to minute basis. The ill effects of these lotteries had assumed major dimensions in the State. The newspaper reports, petitions from the public and reports from the police reveal the magnitude of its ill effects, which include suicides, divorces, starvation and murders. This created more hardship to the respondent-State.

21. The violations in terms of the Act in the case of Meghalaya, Sikkim and Nagaland State lotteries have already been furnished to the Union Government on 12.01.2004 and 23.08.2004, some of which mentioned by the Division Bench of the High Court in the judgment are as follows:-

“(a) The online lottery tickets of Meghalaya, Sikkim and Nagaland States are printed by the terminal in violation of Section 4(b) of the Lotteries (Regulation) Act, 1998 (b) The tickets of these States are printed in the stationery of the Sole- selling agent.

(c) The draws are conducted in such a manner that the transparency and credibility of the draw process is not at all established. According to Meghalaya rules, the presence of one Judge shall form the quorum.

(d) The draws are conducted daily in a severe gambling fashion and in violation of Section 4(h) and prizes are offered on the basis of a single digit violating Section 4(a) of the Act.

(e) There are clear similarities in the name of different lotteries and they follow the same prize pattern, obviously making an attempt to circumvent Section 4(h).” It is then pleaded that in practice, the so-called online lotteries, mislead the general public by its mesmeric gambling instinct inherent in it. People are attracted to the modern technology used in these lotteries and the instantaneous nature of it. They spend all their time in front of the online outlets and spoil all their money. They are being trapped by the simple prizes they get and they invest the remaining part of their money in a hope to get more and more big prizes. This is a continuous process starting from early in the morning and extends too late in the night. The lotteries conducted by these online companies have draws in every 15 minutes. Technically, they call it ‘weekly lotteries’ in order to circumvent the objectives of the Act, but in result they are ridiculously setting aside the spirit of the Act. As a technical argument, each lottery has only one draw in a week. The draw of one lottery repeats only in the next week. But, the tactics followed by these States is that they are conducting more than 100 lotteries with very strange names and by assigning pseudonyms. The online lotteries running in Kerala were in flagrant violation of the provisions of the Act and this fact was detected by the State of Kerala. The State of Kerala has made known this fact to the Union Government twice. The findings of the Government of Kerala revealed that the other States, on whose behalf the lotteries are being conducted in Kerala, have least control over them and major source of income from these gambling type of lotteries siphoned by the so-called middlemen who acts in the name of ‘sole selling agents’. Similarly, the States of Karnataka and Arunachal Pradesh have stopped the sale of online lotteries as they have admitted the violations pointed out by the State of Kerala. Online lotteries are being conducted under the name of other State Governments, circumventing the provisions of the Act, and also the single digit lotteries through dubious methods adopted by their distributors and agents. In some cases, some lotteries except one digit all other digits will be pre-fixed and the buyer has to choose only a single digit. In some other cases, one digit of two digit number or of three digit number will be changing continuously, but in a pre-determined cyclic manner, which shows that the draw is held only for one digit. It was detected from the lottery terminals that the tickets of States of Meghalaya and Nagaland are being printed one after another from the same terminal and the same pool in an unbroken manner. Several tickets without the imprint and logo of other State Governments and

even without signature of the authorized officer of those States have been found being sold in the State of Kerala. Standard set of rules are printed on the reverse side of the stationery and tickets of more than one States are being printed on the same material, by the same terminal in unbroken strips. The proceeds of the sale of online lotteries are rather shared by the distributors and agents without crediting in the public account of the respective States, in violation of the provisions of the Act. The details of unclaimed money are not brought to the knowledge of the other State Governments, whereas the unclaimed prize money is being appropriated by the distributors and agents. The place of draw is not at all located within the other States, whereas the same is being conducted according to the convenience of the distributors. The lottery distributors and agents of other State Governments are resorting to such unscrupulous methods and conducting online lotteries in every 15 minutes from the lottery terminals. The Lottery Department of the State had detected the draws being conducted in lottery outlets for more than 49 draws in a day.

22. The provisions in respect of Sikkim State Lotteries was reported to the Ministry of Home Affairs, Government of India on 12.01.2004. The scheme of lotteries furnished by the Government of Sikkim revealed that they were not in conformity with the provisions of Section 4 of the Act. The irregularities/violations in respect of the Sikkim lotteries being sold in Kerala in the year 2004 were brought to the notice of the State Government earlier with a request for further documents/clarifications. Some of these violations/ irregularities are briefly mentioned below:

“i. On a perusal of the agreement between the Government of Sikkim and M/s. Tashi Delek Gaming Solutions Pvt. Ltd., the Marketing Agent, it is seen that the agreement with the marketing agent is executed seven days before the Sikkim Online Network Lottery Rules came into effect.

ii The Marketing Agent is vested with powers more than what the Lottery Regulation Act permits. The State of Sikkim was asked to offer specific remarks on this.

iii. Since a detailed description of the method of draw was not furnished by the State of Sikkim, the same was called for from this office.

iv. As per rule 12 of the Sikkim Online Network Lottery Rules, 2001, the tickets will be printed on pre-printed ticket material. On perusal of the tickets of Super-Lotto and Thunder Ball it is seen that the specimen play slips furnished by the Director of Lotteries, Sikkim bear the imprint and logo of PLAYWIN. This shows that the tickets are instantly printed at the retail computer terminal, violating Section 4(b) of the Lotteries Regulation Act, 1998.

v. The contractual agreement between the Play Win sub-agent and the distributors was not furnished. So also the names of distributors for certain districts in Kerala were not furnished.

vi. The Government has furnished the details of 926 retail outlets operating in the State. But the contractual agreement between the distributor and these retail outlets were not submitted.

vii. The marketing Agent under the Sikkim State Lotteries is empowered to set-up the required infrastructure and use of technology for the draw purpose. It is clearly more than what is statutorily permissible under Section 4(c) of the Act.

viii. As per Section 4(e) of the Central Act, 'the State Government itself shall conduct the draws of all the lotteries.' But actual conduct of the draws is done by the Marketing Agent, reducing the role of the State Government to that of a mere spectator, thereby violating the above provision.

ix. The Thunderball, the last prize amount of Rs.20/- is 'when one main number and the Thunder ball (fixed) are matched.' Until clarifications to the contrary are provided with evidence, it has to be presumed that this is a camouflaged single digit lottery specifically prohibited under Section 4(a) of the Central Act." It was also pointed out in the letter to the Government of India that Sikkim has delegated more rights and responsibilities to the Marketing Agents than what is statutorily permissible under the Act. However, regarding the appointment of Marketing Agents, the State of Sikkim has informed that they will discuss the matter with the legal wing. The State of Sikkim has admitted that the tickets are printed on PLAYWIN Stationery, clearly admitting violation of Section 4(b) of the Act. With regard to the allegation that 'Thunder Ball' lottery is being organized on the basis of single digit, the State of Sikkim has not offered any reasonable explanation or furnished any document instead the State has merely refuted the same. Even though the State of Sikkim was requested to furnish details/documents/clarifications regarding the allegations raised, no reply was received from it. The Government of Sikkim was reminded on 11.05.2004 and 15.06.2004 to furnish the details called for earlier and also to provide details of the new lotteries introduced by them in Kerala. There has been no response from the State so far. Thus the violations and irregularities pointed out in respect of Sikkim State Lotteries as in January, 2004 continue unabated. This shows that the Government of Sikkim is not inclined to address the serious issues pointed out by the Government of Kerala with regard to the illegalities and violations connected with Sikkim State Lottery tickets which are being sold among the public in Kerala.

Conclusion:

23. The conduct of certain types of lottery trade in the country, the malpractices thereof and their impact on the poorer sections of the society have been under scrutiny of the Government for quite some time. The continued prevalence of the popularly known single digit and instant lotteries and the temptation offered by them proved to be the undoing of many families, especially poor daily wagers and low income groups. In spite of the guidelines issued by the Central Government over a period of time as also the guidelines issued in the recent past by this Court, the evil has not been totally eliminated.

24. The relevant provisions of the Act clearly demonstrate that even though all types of lotteries are meant to be regulated by the said Act, online lotteries were not under the contemplation of the Central Government at the time when the Act came into force. It is otherwise also not a disputed fact that online lotteries became popular insofar as India is concerned only recently and in any case after the enforcement of the Act and that is why the Government of India while framing the 2010 Rules specifically defined 'online lotteries'. Having this background in mind, the Scheme of the Act would clearly show that the Government at that stage was concerned with paper lotteries of all kinds. From the preamble of the Act spelled out from the Statement of Objects and Reasons as re-produced hereinbefore, the necessity to bring about legislation in the matter of regulating lotteries was felt on account of continued prevalence of single digit and instant lotteries. It was primarily done to curb malpractices in the conduct of such lotteries which at that time were paper lotteries only when the Act came into force.

25. With regard to the contention regarding the function of the online lottery, we are of the considered view that any type of manipulation can be done in the printing of tickets at the terminal. The customer cannot know whether the ticket is printed at the terminal based on the command from the central server or not. The State of Sikkim does not have any control over its thousands of terminals all over India. As per Section 4(h) of the Act, the draw should be held once in a week. It means a fortune seeker, after purchasing the ticket, will get a week's cooling time to wait for the result of the draw. But, under the scheme of online lotteries, a number of lotteries run simultaneously. So, by holding several lotteries, there can be several draws with a gap of few minutes in a day and the gullible will remain glued and there is every likelihood of purchase of tickets repeatedly, till all his savings are exhausted. So, if the Government takes a decision in public interest to prohibit online lotteries, this Court should not interfere with the said decision unless there are compelling grounds. As held earlier, going by Section 5, as interpreted by this Court in B.R. Enterprises (supra), the sale of ticket of a particular lottery can be prohibited provided the concerned State Government is not running that lottery. While interpreting a Statute of this nature meant to suppress the mischief of gambling, this Court should accept the concept of purposive interpretation and if possible save the notification intending to save the people from the vice of gambling.

26. It is common case that lottery is a species of gambling. Gambling is considered as a pernicious vice by all civilized societies from time immemorial. The Rigvedas, Smritis and Arthashastras have condemned gambling as a vice. Several Judges and learned authors are unanimous in their condemnation of gambling. Experience has shown that the common forms of gambling are comparatively innocuous when placed in contrast with widespread pestilence of lotteries. The former are confined to a few persons and places, but the latter infests the whole community; it enters every dwelling; it reaches every class; it preys upon the hard earnings of the poor; it plunders the ignorant and the simple.

27. In Words and Phrases, Butterworths, 3rd Edition at page 71, it is stated as follows:

“It must not be entirely forgotten in the construction of these Acts of Parliament (see now the Lotteries and Amusements Act, 1976) that the evil which the lottery law has sought to prevent was the evil which existed where poor people with only a few pence to feed their children would go and put these few pence into a lottery and lose them, and this sociologically was a bad thing...”

28. Even in *B.R. Enterprises* (supra), this Court has held as under: “47. From the references from Dharmashastra, opinions of distinguished authors, references in the Encyclopaedia Britannica and Boston Law Review and others, we find that each concludes, as we have observed, lottery remains in the realm of gambling. Even where it is State-sponsored still it was looked down upon as an evil. Right from ancient time till the day all expressed concern to eliminate this, even where it was legalized for raising revenue either by the king or in the modern times by the State. Even this legitimization was for the sole purpose of raising revenue, was also for a limited period, since this received condemnation even for this limited purpose. All this gives a clear picture of the nature and character of lottery as perceived through the conscience of the people, as revealed through ancient scriptures, also by various courts of the countries.” This Court further added:

“59.....But it cannot be doubted and it is recognized by all the countries that gambling by its very nature promises to make a poor man a rich man; to quench the thirst of a man in dire economic distress or to a man with a bursting desire to become wealthy overnight it draws them into the magnetic field of lotteries with crippling effect. More often than not, such hopes with very remote chance encourages the spirit of reckless prosperity (sic propensity) in him, ruining him and his family. This encouraging hope with the magnitude of prize money never dwindles. Losses and failures in lotteries instead of discouragement increases the craze with intoxicating hope, not only to erase the losses but to fill his imaginative coffer. When this chance mixes with this utopian hope, he is repeatedly drawn back into the circle of lottery like a drug addict. Inevitably, the happiness of his family is lost. He goes into a chronic state of indebtedness.....”

29. Article 246(1) of the Constitution of India deals with exclusive power of the Parliament to make laws with respect to matters enumerated in List I (Union List) in the Seventh Schedule. As per Article 246(2), Parliament and the Legislature of any State also have power to make laws with respect to any of the matters enumerated in List III (Concurrent List) in the Seventh Schedule. The Legislature of the State has, however, exclusive power to make laws with respect to matters enumerated in List II (State List) in the Seventh Schedule, as per Article 246(3) of the Constitution. Also, there being a specific entry dealing with lotteries, the power to legislate on lotteries would be in the exclusive domain of the Parliament, even though it is a form of gambling and would be generally covered under Item No. 34 of List II (State List). The Parliament, in exercise of the power vested in it to enact law on lotteries as per Item No. 40 of List I (Union List), enacted the Lotteries (Regulation) Act, 1998. Section 3 of the Act ordains that save as otherwise provided in Section 4, no State Government shall organize, conduct or promote any lottery. A State Government has been authorized to organize, conduct or promote a lottery, subject to the conditions enumerated

in Section 4 which has already been re-produced earlier. It is absolutely clear that even though the power to legislate on lotteries vests exclusively with the Parliament, the respective States have been delegated this power, but it has to be subject to conditions enumerated in Section 4. By virtue of the provisions contained in Section 12 of the Act, the Government may, by notification in the Official Gazette, make rules to carry out the provisions of the Act. Exercising the powers vested in it by the provisions contained in Section 12, the State of Kerala has framed the “Kerala Paper Lotteries (Regulation) Rules, 2005.”

30. Provisions of the Act, in particular, Section 12 of the Act clearly manifest that even though the power to legislate on the subject ‘lotteries’ is in the exclusive domain of the Parliament, the power to legislate as well has been delegated by the Parliament to the respective States in the country and as mentioned above, it is in exercise of that power the State of Kerala has indeed framed the Rules of 2005. It is significant to mention that Section 5 further authorizes a State Government to prohibit the sale of tickets of the lottery organized, conducted or promoted by every other State. Section 5 of the Act was, however, under a serious challenge in B.R. Enterprises (supra). Framed in somewhat different language, the challenge to Section 5 was that the delegation to the State to decide to prohibit the sale of lotteries organized by other States is a delegation by Parliament of its essential legislative power, without any policy or bereft of the guidelines and that there was total abdication of the legislative power of the Parliament which was a naked delegation, hence, violative of Article 14 of the Constitution of India. The counter contention raised by the States and, in particular, the State of Tamil Nadu which had banned lotteries of other States, but continued to have its own, was that on a plain reading of Section 5, a State without banning its own lotteries can ban lotteries organized by other States. The Union of India and also the State of U.P. had raised a contention that Section 5 should be read as to entitle only such State to ban which, as a policy, does not permit its own lottery to run. If this be so, possibly there could be no discrimination as it would apply uniformly to all the States. On the respective contentions of the learned counsel as mentioned above, this Court framed the question as follows:

“81. The legal principle which emerges, as submitted, is that delegation of essential legislative power of the principal to the delegatee would amount to abdication of its legislative power and if it is bereft of any guidelines then it is unsustainable in the eye of the law.....” While dealing with the question aforesaid, this Court first recorded reasons as to why the power had been delegated by the Union to the States. It was inter alia observed as follows:-

“83. As revealed from Anraj case-I some of the States sought permission of the Union as a policy to raise their revenue through these lotteries, which was conferred by the Presidential Order under Article 258(1), though it records, the State could have exercised their discretion as a policy to have their own lotteries without such permission in view of its extended executive power under Article 298. It further reveals, till Parliament makes any law, the decision to start its lottery or to close it is exclusively within the executive power of each State. This is because it is the policy

decision of a State which has to decide as a principle whether it desires to collect in this form the revenue or not. The benefit of Article 298 is, it is extraterritorial, applicable beyond its territory, it is for this State lotteries are places in Entry 40 List I. So in a federal structure, Union has to play a role to coordinate between one State with the other. So by regulation it has to subserve the objectives. The Union cannot force a State to gamble if such a State does not want to gamble. To run its own lotteries or to close it is left on the discretion of each State. It is each State which has to decide its policy and has to be concerned about its subject. In any case, the Union cannot force any State that it must run its own lotteries. But control of State lotteries running in the territory of other States is left on the Union. The State cannot restrict sales of lotteries organized by other States even in its territory unless authorized by the Union. This difficulty was felt by the State which is indicated in Anraj case-I. That seems to be the reason that Parliament has delegated this power to the State under section 5.....”

31. After taking into consideration the background leading to delegation of power by Union to the States, the question as to whether the delegation could be construed to be such as amounting to delegation of its essential legislative power and that too unguided or unbridled was examined. The question was answered as follows:-

“84. In Section 2(b) lotteries are defined to be a scheme for distribution of prizes by a lot or chance. This definition itself recognizes 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 organized 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 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 organized by every other State. If a State desires not to subject its people to the lottery gambling, it has no power to restrict lotteries organized 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 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 organized 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 [(1984) 2 SCC 292] the remedy is provided by entrusting this power on the State under the impugned provision. This helps such State to 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 terms as 'trade and commerce' at common parlance for any free right under the Constitution. Such right though recognized 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 provided some guidelines. Such an interpretation falls into the trap of the submission that this 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.” “85. There are two parts of the attack of the delegation of power to the State under Section 5. The latter part, by which it can prohibit sale of lottery tickets organized by every State which leaves no scope of any discretion on the States to discriminate from one State to other. So if it decides no lottery tickets of any State to be sold it cannot pick and choose from one State to the other. Once it, as a policy, decides to prohibit the sale of lottery tickets of other States it must prohibit every other State, that is to say, all the States and such a delegation cannot be said to be either abdication of the legislative power of Parliament or to be unbridled or unguided. As we have said looking to the nature of the subject and object of the Act which is to help each State in its endeavor to run State lotteries which would include starting or closing its lotteries and when a State wants to have lottery- free zone in its State, then such a delegation to ban lottery of every other State cannot be said to be invalid. To the first part, there are two interpretation, one on the plain reading of Section 5, a State may run its own lottery yet may prohibit the sale of lotteries of other States. This construction leads to discrimination and opens for criticism of unbridled delegation. The submission further is, if the ban of sale of lottery tickets of every other State is as a public policy, affecting the morality and resultant ill effect on its subject then there is no justification that the State may run its own lottery affecting the very subject for which the power is exercised prohibiting the lotteries of other states. It is true, if such an interpretation is accepted then this submission has a force. On the other hand, on behalf of the Union the submission is that the language of the section has to be read down. The decision to have its lottery or not to have its lottery has to be in the public interest. Every decision to have either lotteries authorized by the State or organized by the State has to be in public interest. May be for collection of public revenue or for a public purpose. It has been held in *Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly* AIR para 93

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There must be no injury or harm to the public interest, public good and public welfare. Thus, the decision to run State lottery has to be made with the conscience (sic consciousness) of its evil consequences on its subject. Thus before deciding the State has to equate the public welfare with the injury on its public. It may be in a given case within the limitation of its financial capacity with the need of the hour it has to decide to run its own lotteries to augment its revenue in the larger interest of the public which if weighed with the evil consequences on its subject, the public welfare gains more by running it then the evil consequence on its subject has to give way till the situation changes by finding a better way for this additional source or evil consequences inflicting on its subject outweighing. This exercise has to be by each

State, the Union not coming in its way. It is for each State to decide what is its public welfare and what constitutes an injury to the public interest. Rattan Chand Hira Chand vs. Askar Nawaz Jung holds, what constitutes public interest or welfare would depend upon the time. The social milieu in which the contract is sought to be enforced would decide the factum, the nature and the degree of injury.

86. 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 its State lottery-free zone, the entrustment of power by Parliament cannot be said to be ultra vires.

87. 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 organized 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.”

32. From the observations made by this Court, as extracted above, learned counsel representing the appellants contended that the State of Kerala could not prohibit any form of lottery as long as it was running other forms of lottery of other States as also of the State of Kerala. After having given anxious thought to the rival contentions, we are not inclined to accept the contention raised by learned senior counsel for the appellants.

33. It may be reiterated that the question that came to be framed by this Court on the rival contentions raised by the counsel for the parties in B.R. Enterprises (supra) was as to whether the delegation of essential legislative power of the principal to a delegatee would amount to abdication of its legislative power and if it is bereft of any guidelines then is it unsustainable in the eyes of law. This Court held that if the State decides that it does not want any lotteries but if it feels helpless as having no jurisdiction over the lotteries organized by other States, it can only be done by the Parliament or by entrusting this power on such State desiring so, which has been done through Section 5. The remedy is provided by entrusting this power on the State under Section 5. This would help the State to achieve its objective of ‘lottery free zone’ within its territory. While dealing with the guidelines, this Court further observed that if a State may want it to be a lottery-free zone, it could not be said that such delegation would be of essential legislative power. The only guideline necessary in such a delegation is to see that the State does not pick and choose one State from the other, which guideline is already provided in the Section. If the ban is applied to all the States and also the State banning

lotteries, the contention that delegation was excessive, uncanalised and unbridled would lose its sting. We are satisfied that by virtue of the provisions contained in Section 12 of the Act, the Centre has delegated its power to legislate with regard to lotteries to States and further that there is specific delegation with regard to ban of lotteries of other States by virtue of the provisions contained in Section 5 of the Act. This delegation of legislative power of the principal to the delegatee would not amount to abdication of legislative power by the Centre and it would not be without any guidelines and would be sustainable in law if the concerned State may ban a lottery in its own State and of other States as well. What is true with regard to the total ban of lotteries of other States, in our view, would also be true with regard to a particular kind of lottery as the delegation of power has been held to be valid if the power by the delegatee may be used uniformly in its own State and also with regard to the other States. In the context of the facts and circumstances of the case as fully detailed above, we hold that when the State of Kerala may prohibit a particular kind of lottery from its own State, it can prohibit sale of such lottery from any other State and that would not be unsustainable in the eyes of law nor it could be against law as held by this Court in *B.R. Enterprises* (supra).

34. We also hold that it is not a case of abdication of legislative power and would not be bereft of any guidelines if the legislation banning lotteries was applied uniformly. We, on the interpretation of the point on the issue of delegation of essential legislative power bereft of any guidelines, hold that it is not a case of abdication of the legislative power of the Centre and further that if the ban on the online lottery applies uniformly, it would not be a case of exercising power by a delegatee without any guidelines.

35. In the case of *The Senior Electric Inspector* (supra), this Court, while considering as to whether the doctrine of *contemporanea expositio* can be applied in construing Acts which are comparatively modern, held as under:-

“The legal position may be summarized thus:-The maxim *contemporanea expositio* as laid down by Coke was applied to construing ancient statutes but not to interpreting Acts which are comparatively modern. There is a good reason for this change in the mode of interpretation. The fundamental rule of construction is the same whether the court is asked to construe a provision of an ancient statute or that of a modern one, namely, what is the expressed intention of the Legislature. It is perhaps difficult to attribute to a legislative body functioning in astatic society that its intention was couched in terms of considerable breadth so as to take within its sweep the future development comprehended by the phraseology used. It is more reasonable to confine its intention only to the circumstances obtaining at the time the law was made. But in a modern progressive society it would be unreasonable to confine the intention of a Legislature to the meaning attributable to the modern Legislature to the meaning attributable to the modern Legislature making laws to govern a society which is fast moving must be presumed to be aware of an enlarged meaning the same concept might attract with the march of time and with the revolutionary changes brought about in social, economic, political and scientific and other field of human activity. Indeed, unless a contrary intention appears, an interpretation should be given to the

words used to take in new facts and situations, if the words are capable of comprehending them.”

36. In State vs. S.J. Choudhary (supra), this Court in paragraph 10 had referred to a passage contained in statutory interpretation by Francis Bennion, Second Edition for holding that the Indian Evidence Act, 1872 is by its very nature is an “ongoing Act”. Paragraph 10 of the judgment is reproduced below:-

(2) It is presumed that Parliament intends the court to apply to an ongoing Act a construction that continuously updates its wording to allow for changes since the Act was initially framed (an updating construction). While it remains law, it is to be treated as always speaking. This means that in its application on any date, the language of the Act, though necessarily embedded in its own time, is nevertheless to be construed in accordance with the need to treat it as current law.

* * *” In the comments that follow it is pointed out that an ongoing Act is taken to be always speaking. It is also, further, stated thus: “In construing an ongoing Act, the interpreter is to presume that Parliament intended the Act to be applied at any future time in such a way as to give effect to the true original intention. Accordingly the interpreter is to make allowances for any relevant changes that have occurred, since the Act’s passing, in law, social conditions, technology, the meaning of words, and other matters. Just as the US Constitution is regarded as ‘a living Constitution’, so an ongoing British Act is regarded as ‘a living Act’. That today’s construction involves the supposition that Parliament was catering long ago for a state of affairs that did not then exist is no argument against that construction. Parliament, in the wording of an enactment, is expected to anticipate temporal developments. The drafter will try to foresee the future, and allow for it in the wording.

* * * An enactment of former days is thus to be read today, in the light of dynamic processing received over the years, with such modification of the current meaning of its language as will now give effect to the original legislative intention. The reality and effect of dynamic processing provides the gradual adjustment. It is constituted by judicial interpretation, year in and year out. It also comprises processing by executive officials.”

37) Similarly, in SIL Import USA (supra), this Court has again reiterated as follows:-
“16. Francis Bennion in Statutory Interpretation has stressed the need to interpret a statute by making “allowances for any relevant changes that have occurred, since the Act’s passing, in law, social conditions, technology, the meaning of words, and other matters”.

17. For the need to update legislations, the courts have the duty to use interpretative process to the fullest extent permissible by the enactment. The following passage at p. 167 of the above book has been quoted with approval by a three-Judge Bench of this Court in State v. S.J. Choudhary: “It is presumed that Parliament intends the court to apply to an ongoing Act a construction that continuously updates its wording to allow

for changes since the Act was initially framed (an updating construction). While it remains law, it is to be treated as always speaking. This means that in its application on any date, the language of the Act, though necessarily embedded in its own time, is nevertheless to be construed in accordance with the need to treat it as current law.””

38. With the ongoing development in the field of science and technology, even though the online lotteries were not in vogue in 1998 when the Parliament had passed the Act, it came into existence at a later point of time. The principles laid down by this Court in *B.R. Enterprises* (supra) would apply to the paper lotteries which were in existence at that point of time. The principles laid down therein would also apply to online lotteries or internet lotteries by treating them as a separate class. The principle laid down therein is that if the State Government has to prohibit any lottery organized, conducted or promoted by every other State, it has to prohibit the sale of its own lottery also. Meaning thereby, if a paper lottery is being prohibited by a particular State then that paper lottery has to be prohibited as a whole. Likewise, if online or internet lottery is to be prohibited by a State then that online lottery or internet lottery of all States including that State also has to be prohibited. Viewed from this angle, we are of the considered opinion that State of Kerala was well within its rights to prohibit the sale of online or internet lotteries in its State and there is no fault in it. It is well within the powers conferred on it under Section 5 of the Act. A State Government can organize, conduct or promote a lottery subject to conditions mentioned in Section 4 and if there is any violation of the conditions mentioned in Section 4, it would be always open to the State Government to prohibit such lottery and that would be within the legislative power vested with the State under Section 5 of the Act as in that case the State would be only complying with the provisions of the Act made by the Parliament. The learned Single Judge while examining the facts of the case, manner and method in which the sale of online lotteries are conducted, has already held that it violates the provisions contained in Section 4 of the Act. In fact, during the course of arguments, no effort was made to dislodge the findings recorded by the courts below. The view adopted from the observation made by this Court in *B.R. Enterprises* (supra), in any case, is possible.

39. In our considered opinion, learned single Judge of the High Court rightly mentioned in his judgment that “in fairness, it must be conceded that Section 5, in the light of the interpretation in *B.R. Enterprises* (supra), admits two interpretations. One is that the State can prohibit any form of lottery, if only it is not running any lottery at all. The second interpretation is that the State can prohibit a particular form of lottery, if it is not running that form of lottery, even if it is running other types of lotteries. The Act has been designedly made to suppress the mischief of lottery. Therefore, we feel that an interpretation, which advances the object of the Act, should be favoured. That means, the State can prohibit online lotteries, if it is not running the said type of lotteries. The decision in *B.R. Enterprises* (supra), which was dealing with the prohibition of paper lotteries, does not stand in the way of accepting such an interpretation. Accordingly, the main challenge against the impugned notification that it violates Section 5 of the Act is repelled.

40. In view of the foregoing discussion, we do not find any infirmity in the order passed by the Division Bench of the High Court dated 23.05.2006, consequently, the appeals and the

writ petitions fail and are accordingly dismissed. However, the parties are left to bear their own costs.

Judgment Referred.

¹(1962) 3 SCR 0146

²(1996) 2 SCC 0428

³(1999) 4 SCC 0567