

GAHC010003252020



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/98/2020

BIG STAR G SERVICES LLP
HAVING ITS REGISTERED OFFICE AT FLAT NO. G2, RODALEE
APARTMENT, ZOO NARENGI ROAD, GUWAHATI- 781024, ASSAM,
REPRESENTED BY ITS AUTHORIZED SIGNATORY SRI RAM PRASAD
BASNETT

VERSUS

THE STATE OF ARUNACHAL PRADESH AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY, DEPARTMENT
OF STATE LOTTERIES, GOVERNMENT OF ARUNACHAL PRADESH,
ITANAGAR

2:THE DEPUTY SECRETARY
DEPARTMENT OF STATE LOTTERIES
GOVERNMENT OF ARUNACHAL PRADESH
ITANAGAR

3:M/S SUMMIT ONLINE TRADE SOLUTIONS PVT. LTD
A COMPANY REGISTERED AND INCORPORATED UNDER THE COMPANIES
ACT
1956 (AS AMENDED THROUGH THE COMPANIES ACT
2013) AND HAVING ITS OFFICE AT 7
RAYALA TOWERS
GR. FLOOR
781-785 (NEW NO.158)
ANNA SALAI
CHENNAI - 600002 AND LOCAL OFFICE AT B S HOUSE
MLA COTTAGE
ESS SECTOR
ITANAGAR - 79111

Advocate for the Petitioner : I. CHOUDHURY SR ADV

Advocate for the Respondent : GA, AP

BEFORE
THE HON'BLE MR JUSTICE PRASANTA KUMAR DEKA

For the Petitioner : Mr. I Choudhury, Sr. Advocate
Mr. S Biswakarma, Advocate.

For the respondents : Mr. S Dutta, Advocate
Mr. BD Goswami, Additional Advocate General, AP
Mr. Chandran, GA, AP.

Date of hearing : 06.08.2020
Date of Judgment/ Order : 25.03.2021

JUDGMENT & ORDER (CAV)

Heard Mr. I Choudhury, learned senior counsel assisted by Mr. S Biswakarma, the learned counsel for the petitioner. Also heard Mr. S Dutta, the learned counsel for the respondent No. 3 and Mr. B D Goswami, the learned Additional Advocate General, State of Arunachal Pradesh assisted by Mr. Chandran, the learned Government counsel, Arunachal Pradesh.

2. The petitioner is involved in the lottery business having its infrastructure required for performing as a distributor of lottery tickets both conventional paper lottery and online lottery in any State of India. The respondent No. 1 through its Secretary, Department of State Lottery published 'request for proposal' (RFP) on 01.11.2013 for selection of distributors of conventional paper and online lottery. In the said RFP, it was provided that the interested bidders may submit bid separately for each set of draws either for paper lottery or for online lottery or both. The respondent No. 3 submitted its tender for two sets of online lottery and another party, Future Gaming and Hotel Services Pvt. Ltd along with other parties participated in the said RFP. The respondent No. 3 was selected for online lottery and in terms of the offer

made by the Government of Arunachal Pradesh the respondent No. 3 accepted its appointment as distributor of online lottery. Out of 3 sets of lotteries, two online sets of lotteries were allotted to the respondent No. 3 as its distributor and one set of conventional paper lottery scheme was allotted to the said Future Gaming and Hotel Services Pvt. Ltd.

3. In terms of the letter of appointment, two separate agreements were executed by and between the Secretary, Department of State Lottery, Government of Arunachal Pradesh and the respondent No. 3. It is alleged that on 08.08.2016 the operation of online lottery was suspended by the State respondents due to violation of the provision and Rules by the respondent No. 3. On 15.09.2016 a committee was constituted to examine allegations connected with lottery operation and the committee submitted its report on 08.11.2016 recording its finding and making various recommendation. It is further alleged that there was specific allegation of violation in the scheme of online lottery. The respondent No. 3 allegedly admitted to such violation and volunteered to compensate the Government. The respondent No. 3 was allowed to resume its operation of online lottery on stringent condition after the said findings by the committee on 08.11.2016.

4. The Government of Arunachal Pradesh constituted another committee on 27.08.2018 to examine various complaints and allegations in respect of the lottery operation. The committee submitted its report recording multiple violation in online lottery operation as per its report dated 28.11.2018. On the other hand, the respondent No. 3 being exposed for violation of the statutory provision on 29.08.2018 submitted a representation to the Chief Minister, Arunachal Pradesh requesting conversion of the distributorship from online lottery into paper lottery.

5. The petitioner having come to know that the respondent No. 3 virtually surrendered its distributorship of online lottery submitted a representation on 11.09.2018 for being appointed as distributor of online lottery @ Rs. 20,000/- per draw which was much higher than the rate of Rs. 14,000/- per draw of the respondent No. 3 with an alternative prayer to invite fresh tender.

6. The petitioner submitted another representation on 14.09.2018 showing calculations and the benefit for the Government of Arunachal Pradesh which revealed that the

Government stand to gain by an additional revenue of Rs. 3,57,32,000/-. The said two representations were not considered.

7. On 12.09.2018 at the instance of the Chief Minister, the Government of Arunachal Pradesh took decision to convert the 16 draws of online lotteries into paper lotteries. The petitioner filed this writ petition and vide order dated 19.09.2018 this court was pleased to stay the impugned decision dated 12.09.2018. The petitioner did not participate in the request for proposal but preferred this writ petition alongwith the following reliefs:

“In the premises aforesaid, it is therefore respectfully prayed that Your Lordships may be pleased to admit this petition, call for the records and issue a Rule calling upon the respondents to show cause as to why:

- a) A writ in the nature of Certiorari shall not be issued to set aside/ quash the impugned decision of the respondent authorities of allowing the respondent No. 3 to operate as Distributor of paper lotteries as communicated vide impugned letter dated 12.09.2018, and/or*
- b) A writ in the nature of Mandamus shall not be issued directing the respondent authorities to forthwith cancel/ recall/ rescind and/or otherwise forbear from acting upon the impugned decision of the respondent authorities of allowing the respondent No. 3 to operate as Distributor of paper lotteries as communicated vide impugned letter dated 12.09.2018, and/ or*
- c) A writ in the nature of Mandamus shall not be issued directing the respondent authorities to allow the petitioner to operate the 2 sets of online lotteries at the rates quoted by it, and/ or*
- d) A writ in the nature of Mandamus shall not be issued directing the respondent authorities to forthwith terminate the contract entered into with the respondent No. 3 vide agreement dated 27.07.2015, the respondent No. 3 having admitted violation thereof, and to further direct the respondent authorities to forthwith initiate a fresh tender process for appointment of Distributor(s) of 2 sets of online lotteries so organized by the Govt. of Arunachal Pradesh, and*

Upon cause/ causes that may be shown, after hearing the parties and upon perusal of

the records be pleased to make the Rule absolute and/ or to pass any other appropriate order or direction as to Your Lordships may deem fit and proper in the facts and circumstances so as to give full and complete relief to the petitioner and

Pending disposal of the Rule Your Lordships may be pleased to stay/ suspend the impugned decision of the respondent authorities of allowing the respondent no. 3 to operate as Distributor of paper lotteries as communicated vide impugned letter dated 12.09.2018, and/ or to pass such further or other order(s) as Your Lordships may deem fit and proper in order to grant adequate interim protection."

8. The respondent No. 3 filed its affidavit-in-opposition, denied all the allegations against the respondent No. 3 and further stated that the writ petition is not maintainable as the petitioner is a stranger to the issues sought to be raised in the writ petition. The petitioner is not engaged with any business with the Government of Arunachal Pradesh nor it has any role in the draws of the Arunachal Pradesh State lotteries. The impugned letter dated 12.09.2018 does not curtail any right of the writ petitioner and as such the petitioner has no locus standi to maintain this writ petition.

9. The respondent Nos. 1 and 2 also filed the affidavit-in-opposition. In the said affidavit-in-opposition, the issue of maintainability of the writ petition is raised on similar grounds as those stated by the respondent No. 3 in the affidavit-in-opposition. Further it is stated that the Government of Arunachal Pradesh only approved the paper lottery scheme of the respondent No. 3 but yet to finalise the terms and conditions of the agreement. It is further denied that the representation dated 29.08.2018 of the respondent No. 3 and the contents thereof amounts to surrender of the distributorship of online lotteries of the respondent No. 3 entailing termination of the agreement dated 27.07.2015 entered into between the respondent no. 3 on one part and the State of Arunachal Pradesh through the Commissioner and Secretary, Department of State Lotteries on the other.

10. Mr. Choudhury, the learned senior counsel for the petitioner in response to the issue of maintainability submits that the respondent No. 3 and the state respondents failed to controvert the statements made in the writ petition and instead took the stand that the petitioner was a stranger so far the contracts of online lotteries were concerned and does not

have the locus standi to maintain the writ petition. Referring ***Chalchitra vs Commissioner, Meerut Mandal & Ors. reported in (2005) 3 SCC 683*** it is submitted by Mr. Choudhury that the petitioner being in the same trade of lottery has a right to seek cancellation of the distributorship of the respondent No. 3 on the basis of factual matrix pleaded in the writ petition. In fact there is a specific prayer in the writ petition seeking for a direction to terminate the agreement dated 27.07.2015 entered with respondent No. 3 by the respondent State in view of the admitted and undisputed fact in the representation dated 29.08.2018 in terms of the clause 21 of the agreement.

11. It is further submitted by Mr. Choudhury, learned Senior counsel that the tender was invited separately for online lotteries and paper lotteries. The respondent No. 3 specifically submitted its tender for online lotteries and its credential, experience etc were evaluated for online lotteries, the offers were made for online lotteries. The acceptance was expressly on online lotteries and consequential agreements were executed specifically for online lotteries. As such the subsequent conversion from online lotteries to paper lotteries of the distributorship amounts to issuance of a fresh contract but without inviting any tender and as such the impugned action is violative of Article 14 of the Constitution of India. Tender not having been invited it violated the fundamental and legal right of the petitioner.

12. Mr. Choudhury further relies ***Ramana Dayaram Shetty vs. International Airport Authority of India & Ors. reported in (1979) 3 SCC 489***. It is submitted that a person similarly placed cannot be non-suited on the ground of locus standi. Relying ***Wallamphang Roy vs State of Meghalaya & Ors reported in 2004(2) GLT 403*** it is the contention of Mr. Choudhury that a PIL cannot be maintained to challenge the impugned action and it is at the instance of a person who was directly affected by award of an illegal contract who can maintain a challenge.

13. Mr. Choudhury referring to the representation dated 29.08.2018 of the respondent No. 3 wanted to project that the same goes to show the inability of the respondent no. 3 to perform its part of the contract of sale of online lotteries. In terms of clauses 21.2 as well as 21.3 of the agreements dated 27.07.2015, the contracts were required to be terminated. Pursuant to such termination the Government could have either considered the representation submitted by the petitioner in terms of clause 21.5 of the agreement or ought

to have invited fresh tender. By the impugned decision undue and uncalled favour was shown to the respondent No. 3 by awarding fresh contract and that too without any fresh tender process.

14. Mr. Dutta, learned counsel for the respondent No. 3 submits that the petitioner is totally a stranger so far the agreement entered by the respondent No. 3 and the State respondent is concerned. In the representation of the respondent No. 3 it was indicated that there was decline of sale volume of online lottery tickets due to certain changes in the market conditions and it does not amount surrender of the distributorship. The agreements stipulate definite contractual rights and obligations on the parties itself and as such it is for the parties to decide whether or not to terminate the agreement based on the terms and conditions of the contract. The petitioner has no locus standi to maintain the writ petition and it is liable to be dismissed.

15. The agreement in question provided that the Government can change the scheme based on market condition and also on a request received from the distributor in writing. The said conditions are not challenged. If the argument made by the learned Senior counsel for the petitioner is to be accepted the Government should cancel the contract with the respondent No. 3 taking recourse to clause 21 and instead allow the petitioner to run two sets of online lotteries on the strength of clause 21.5. The case of the petitioner essentially is for enforcement of the contract. Such prayer itself is not tenable at the instance of the writ petitioner. The petitioner also made the prayer to float fresh NIT as per as the draws allotted to the respondent No. 3. The contentions of the learned Senior counsel for the petitioner are wholly incongruous and militate each other. Accordingly, the prayer made by the petitioner is liable to be rejected.

16. Mr. Goswami on behalf of the respondent State submits that the petitioner did not even participate in the tender process pursuant to the RFP and the petitioner as such has no locus standi to maintain the writ petition. The Government of Arunachal Pradesh only approved the paper lottery scheme of the respondent No. 3 within the total 16 numbers of draws allotted to the respondent No. 3 as per the agreement dated 27.07.2015. The action of the Government does not violate any rights of the writ petitioner much less the fundamental right and for the same the writ petition is liable to be dismissed. There is no bar prohibiting

the Government in choosing the type of scheme in order to run the lottery be it online or paper lottery or combination of both within the number of draws permitted under the law. Therefore, the petitioner who does not have any privity of contract and is a complete outsider cannot complain of any deprivation under Article 14 of the Constitution of India. In support of the said contention Mr. Goswami relies ***Jashbhai Motibhai Desai vs. Roshan Kumar, Haji Bashir Ahmed and Others reported in (1976) 1 SCC 671*** and further submits that the petitioner failed to make out any case of exceptional circumstances involving grave miscarriage of justice vis-à-vis its own interest so as to invoke the extra ordinary power by this court. The decisions relied by the petitioner are distinctly different inasmuch the petitioner in the present writ petition had challenged a subsisting valid contract to which the petitioner is not a party nor affected by the impugned order.

17. The representation dated 29.08.2018 of the respondent No. 3 nowhere mentioned the failure of the respondent No. 3 to continue as distributor of online lottery except an indication of declination of sale of lottery tickets pursuant to imposition of GST. That does not amount to surrender any of the draws allotted to it as per the two agreements executed with it by the Government of Arunachal Pradesh. Moreover, the respondent No. 3 under Clause 14 of the agreement promised to pay minimum guaranteed revenue regardless of the volume of business.

18. From the submissions of the learned counsel for the respondents it would be proper in my opinion, to take up the issue of maintainability of the writ petition. With the said object let me take note the relevant facts which can very well be drawn from the submissions of the learned counsel which are not disputed as follows:

(i) Request for proposal (RFP) dated 01.11.2013 was issued by the respondent No. 1 through its Secretary, Department of State Lottery for selection of distributors for conventional paper and online lotteries.

(ii) The petitioner did not participate in the said RFP but the respondent No. 3 along with other bidders including M/s Future Gaming and Hotel Services Pvt. Ltd. participated. The respondent No. 3 participated for two sets of online lottery and the M/s Future Gaming and Hotel Services Pvt. Ltd. for one set of conventional paper lottery. There were in total three

sets of lottery under the schemes viz paper and online lotteries. The participants were free to choose the scheme and number of sets.

(iii) The respondent No. 3 opted and participated in two sets of online paper lottery. The respondent No. 1 issued letter of appointment dated 23.06.2014 against the bid of the respondent No. 3 in respect of two sets of online lotteries but at the rate quoted by the Future Gaming and Hotel Services Pvt. Ltd. The respondent No. 3 accepted the same vide letter dated 23.06.2014.

(iv) Thereafter as per the terms of the RFP the respondent No. 3 entered into agreements dated 27.07.2015 with the Government of Arunachal Pradesh which stipulated various terms and conditions governing the distributorship. The Government was represented by the Secretary, Department of State Lottery. Two agreements were executed for distributorship of two sets of online lottery with identical terms and conditions. Amongst various terms and conditions the relevant ones are extracted hereinbelow:

“1. The Agreement will come into force with effect from the date of first draw of lottery scheme for a period of 5(five) years.

5. Framing of schemes:

5.1 Subject to sub-rules (2), (3), (4), (6), (7), (8) and (9) of Rules 3 of the Central Lotteries (Regulation) Rules of 2010 and the relevant provisions of the Arunachal Pradesh Lotteries (Regulation) Rules of 2013, the State Government may frame different lottery schemes which it may like to introduce from time to time. The State Government may consult the Sole Distributor while framing the various lottery schemes. The lottery schemes can be approved/ notified by the Secretary of the Arunachal Pradesh State Lotteries. All the lottery schemes shall be as per the market conditions.

5.5 Subject to the relevant provision as contained in sub-rules (2), (3) and (4) of the Central Lotteries (Regulation) Rules 2010 read with relevant provisions of Lotteries (Regulation) Rules 2013, the Government, on a request made by the Sole Distributor in writing may change the lottery schemes keeping in view the changed market conditions.

21. Termination:

21.2 The Government reserves the right to terminate the Agreement by giving 60 (sixty) days notice in writing to the Sole Distributor for any clear or proven failure of performance or violation or breach of any of the terms and conditions of the

Agreement.

21.3 In case the Sole Distributor desires to stop the marketing of tickets on his own will, he shall have to give 60 (sixty) days notice in writing to the Department of State Lottery. In case the Sole Distributor fails to give the prior notice of 60 (sixty) days he shall have to compensate the Government for the loss of revenue which it would have earned during the period of 60 (sixty) days as per rates prevailing at the time of stoppage of sales, and the amount shall be recovered from the Bank Guarantee or any other valuable security as submitted by the company to the State Government.

21.4 Notwithstanding the above clauses, the Government reserves the right to rescind the Agreement with the Sole Distributor, after clear fifteen days notice in the event of anyone of the following:

- (a) Fraudulent conduct in sale of lottery tickets by the Sole Distributor;*
- (b) Any act of misconduct or malfeasance on the part of Sole Distributor;*
- (c) Erratic running of lottery without any sufficient causes;*

21.5 In such cases, the Government shall be at liberty to appoint another Sole Distributor of its choice on same terms and conditions;"

(v) From the aforesaid terms and conditions it is seen that contracts were concluded one stipulating amongst others the duration of the contract, how and in what manner the contract stands terminated with special conditions for invoking the clause of termination of the contract by the respondent State. Further it is also stipulated that the Government on a request made by the Sole distributor in writing may change the lottery schemes keeping in view the changed market condition.

(vi) The respondent No. 3 vide the representation dated 29.08.2018 addressed to the Chief Minister, Arunachal Pradesh requested to allow it to market all kinds of lottery tickets of Arunachal Pradesh under the terms of the existing agreements facilitating it to market paper lotteries of the State. The Chief Minister forwarded the said representation to the respondent No. 1 with the noting "Please examine & process". Vide the impugned order dated 12.09.2018 issued by the respondent No. 1 the said proposal was approved within the 2 (two) sets of online lotteries as per the agreement executed on 27.07.2015 for the remaining period of the contract.

19. The petitioner challenged such action of conversion of the distributorship from online

lottery to paper lottery on the ground that the respondent No. 3 submitted its tender for online lotteries and its credentials, experience etc were evaluated for online lotteries and the acceptance by the respondent No. 1 was expressly on online lotteries whereafter consequential agreements were executed specifically. Subsequent conversion from online lotteries to paper lotteries of the distributorship amounts to issuance of a fresh contract and tender having not been invited it violated the fundamental and legal right of the petitioner. The other ground for challenge is that the representation dated 29.08.2018 of the respondent No. 3 goes to show the inability of the said respondent No. 3 to perform its part of the contract of the distributorship of online lotteries. In terms of clauses 21.2 and 21.3 of the agreement dated 27.07.2015 the contract of distributorship were required to be terminated. Pursuant to such termination the respondent No. 2 could have either considered the representation submitted by the petitioner in terms of clause 21.5 of the agreement alternatively, ought to have issued fresh tender. But by the impugned decision dated 12.09.2018 at the instance of the Chief Minister, the Government of Arunachal Pradesh had shown undue and uncalled favour to the respondent No. 3. While doing so the respondent No. 1 had abdicated its statutory power in favour of the Chief Minister.

20. The learned counsel for the respondents took the stand that the petitioner has no locus standi to seek for specific performance of the contract entered into by the Government of Arunachal Pradesh in the Department of State Lottery and the respondent No. 3 as the petitioner is totally a stranger to the said agreement. Moreover, the petitioner did not even participate in the NIT/RFP, so it cannot raises its grievance for non consideration of his representation to appoint him as the distributor of online lottery after termination of the contract with the respondent No. 3 by the respondent No. 1.

21. In the light of the argument of the learned counsel let me discuss the issue of locus standi of the writ petitioner. The petitioner did not participate in the tender process/ RFP but the respondent No. 3 participated alongwith other bidders. Respondent No. 3 responded to the terms of letter of appointment issued by the respondent, Secretary, Department of State Lottery, Government of Arunachal Pradesh. Subsequent thereto agreements were entered into by the respondent No. 3 and the Government of Arunachal Pradesh. Had the petitioner participated in the tender process and his bid was rejected then the petitioner would have the

right to raise any grievances alleging discrimination/ arbitrariness in the selection process citing violation of Article 14 of the Constitution of India. Subsequent to the finalization of the tender process the respondent No. 3 and the Government of Arunachal Pradesh entered into agreements dated 27.07.2015 stipulating various terms and conditions, relevant amongst them are referred hereinabove which governs the contract of distributorship for sale of online lottery tickets. The petitioner cannot ask for specific performance of a specific term in the said agreement inasmuch as he is not a signatory to the said agreement. Nor he can challenge the impugned order dated 12.09.2018 permitting conversion of the distributorship from online lottery to paper lottery of the respondent No. 3.

22. Here it would be relevant to rely the ratio arrived at by the Apex Court in ***M/s Radhkrishna Agarwal and Others vs State of Bihar and others reported in AIR 1977 SC 1496.***

“10. It is thus clear that the Erusian Equipment & Chemicals Ltd's case (AIR 1975 SC 266) (Supra) involved discrimination at the very threshold or at the time of entry into the field of consideration of persons with whom the Government could contract at all. At this stage, no doubt, the State Act purely in its executive capacity and is bound by the obligations which dealings of the State with the individual citizens import into every transaction entered into in exercise of its constitutional powers. But, after the State or its agents have entered in to the field of ordinary contract, the relations are no longer governed by the constitutional provisions but by the legally valid contract which determines rights and obligations of the parties inter se. No question arises of violation of Art. 14 or of any other constitutional provision when the State or its agents, purporting to act within this field, perform any act. In this sphere, they can only claim rights conferred upon them by contract and are bound by the terms of the contract only unless some statute steps in and confers some special statutory power or obligation on the State in the contractual field which is apart from contract.”

23. Thus it was held that once the State or its agents enters into ordinary contract with individual citizen, the State or its agents are no longer bound by Constitutional provision but by the contract and its terms for determination of rights and obligations. The State or its agents are bound by Constitutional provisions till the time a tender process is brought to its

logical conclusion deciding with whom the Government could contract. The petitioner did not participate in the tender process and as such the question of challenging any arbitrariness in the tender process or its evaluation does not arise.

24. Further the subsequent act of consideration of the representation of the respondent No. 3 and passing of the order impugned dated 12.09.2018 by the respondent No. 1 is the outcome on the basis of the stipulated terms of the contract. This is because of the fact that clause 5.5 of the agreement dated 27.07.2015 authorises the Government to change the lottery scheme on a request made by the sole distributor. Even if the provision of the said clause 5.5 was wrongly invoked by the Government then also the petitioner cannot agitate before this court under Article 226 of the Constitution of India inasmuch as the petitioner is not a signatory to the said agreement.

25. Mr. Choudhury, the learned Senior counsel for the petitioner wanted to project that the petitioner has a right to file this writ petition on the ground that he is in the same trade and practice as that of the respondent No. 3 and the said right emanates from Article 19(1)(g) of the Constitution of India.

26. The said submission of Mr. Choudhury is not acceptable to me for the discussions made hereinbelow. In the case of ***State of Bombay Vs. RMD Chamarhangwala reported in AIR 1957 SC 699*** it was held that gambling activities are in their very nature and essence extra commercium. The said ratio was upheld in ***BR Enterprises Vs. State of UP and Ors. etc reported in (1999) 9 SCC 700*** wherein the issue was whether to permit lotteries authorised by the State under Section 5 of the Lotteries (Regulation) Act, 1998 or organized by the State is a matter of public policy to be exercised in the public interest by the State. It was lucidly explained and the relevant portion is extracted hereinbelow:

“64. The stringent measures and the conditions imposed under the State lotteries are only to inculcate faith in the participant of such lottery, that it is being conducted fairly with no possibility of fraud, misappropriation or deceit and assure the hopeful recipients of high prizes that all is fair and safe. That assurance is from stage one to the last with full transparency; No doubt holding of the State lotteries for public revenue has been authorised, legalised and once this having

been done it is expected from the State to take such measure to see that people at large, faithfully and hopefully participate in larger number for the greater yield of its revenue with no fear in their mind. [The Act](#) further ensure by virtue of [Section 4\(d\)](#) that the proceeds of the sale of such lottery tickets is credited to the public accounts of the State. This is to give clear message to the participants that the proceeds are not in the hands of individual group or association but is ensured to be credited in the State accounts. But, as we have said, this by itself would not take it outside the realm of gambling. It remains within the same realm. In this regard there is no difference between lotteries under Entry 34, List II and a lottery organised by the State under Entry 40, List I. When character of both the State organised lotteries and other lotteries remains the same, by merely placing the apparel of the State with authority of law, would not make any difference, it remains gambling as element of chance persist with no element of skill. Even other lotteries under Entry 34, List II could only be run under the authority of the State or the law of the State. Only difference is in one case, authority is that of State and in other, the Parliament. That is why, what is excluded from the penal consequences under [Section 294-A, IPC](#) is the lotteries authorised by the State not merely lotteries organised by the State. So, on the reasoning as put forward even lotteries under Entry 34, List II cannot be said to be pernicious. The lotteries authorised by the State also have a sanction in law. As we have said, a gambling may be taxed and may be authorised for a specified purpose, but it would not attain the status of trade like other trades or become res commercium. No gambling could be commercium hence in our considered opinion the principle of RMDC case would equally be applicable even to the State organised lottery. In no uncertain terms the said decision recorded that the constitutional makers could never have conceived to give protection to gambling either under [Article 19\(1\)\(g\)](#) or it as a trade under [Article 301](#) of the Constitution."

27. In view of the aforesaid ratio it can be concluded that lottery includes gambling as an element of chance which requires no skill and as held by the Apex court it would not attain the status of trade like other trades or become res commercium. Accordingly, the petitioner has no right to invoke Article 14 of the Constitution of India or under Article 19(1)(g) of the

Constitution of India seeking for his protection of his fundamental right for carrying on trade and commerce of the State lotteries.

28. The Apex Court in ***Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others (supra)*** distinguished a "person aggrieved" from "stranger" as follows:

"39. To distinguish such applicants from 'strangers', among them, some broad tests may be deduced from the conspectus made above. These tests are not absolute and ultimate. Their efficacy varies according to the circumstances of the case, including the statutory context in which the matter falls to be considered. These are: Whether the applicant is a person whose legal right has been infringed? Has he suffered a legal wrong or injury, in the sense, that his interest, recognised by law, has been prejudicially and directly affected by the act or omission of the authority, complained of? Is he a person who has suffered a legal grievance, a person "against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something"? Has he a special and substantial grievance of his own beyond some grievance or inconvenience suffered by him in common with the rest of the public? Was he entitled to object and be heard by the authority before it took the impugned action? If so, was he prejudicially affected in the exercise of that right by the act of usurpation of jurisdiction on the part of the authority? Is the statute, in the context of which the scope of the words "person aggrieved" is being considered, a social welfare measure designed to lay down ethical or professional standards of conduct for the community? Or is it a statute dealing with private rights of particular individuals?"

29. If the aforesaid tests are applied it is found that the petitioner is not entitled to object and be heard by the respondent No. 1 while taking the impugned decision. The impugned decision dated 12.09.2018 does not in any manner injure the interest of the petitioner recognized by law. The impugned decision was taken within the stipulated terms of the contract to which the petitioner is not a signatory. Nor the decision taken complained of, deprived the petitioner of any legal or constitutional right nor he is similarly placed as that of the respondent No. 3 inasmuch as he did not even participate in the RFP/ NIT as hereinabove stated. Accordingly in my considered opinion the petitioner has no locus standi to challenge the impugned decision dated 12.09.2018 by which the respondent No. 3 was allowed to convert the online lottery distributorship to the one of paper lottery. This writ petition stands dismissed as the same is not maintainable. No costs. Interim order passed stands vacated.

JUDGE

Comparing Assistant